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AMERICAN "GOOD OFFICES" IN ASIA

By TYLER DENNETT

The first article of the American treaty with China, June 18, 1858, reads:

There shall be, as there have always been, peace and friendship between the United States of America and the Ta Tsing Empire, and between their peoples, respectively. They shall not insult or oppress each other for any trifling cause, so as to produce an estrangement between them; and *if any other nation should act unjustly or oppressively, the United States will exert their good offices, on being informed of the case, to bring about an amicable arrangement of the question, thus showing their friendly feelings.*

This solemn engagement, the clumsy language of which leaves open the inference that insults and oppressions are not prohibited if the cause is more than trifling, and also involves the United States, in offering good offices, in prejudgment of the case, appears in slightly different phraseology in Article 1 of the American treaty with Korea, signed May 22, 1882, at the mouth of the Salee River.

By these treaties, therefore, the United States assumed toward the two nations respectively, a peculiar relationship. No other treaty with China contained such a provision, and, while the other treaties of Korea with foreign powers substantially copied from the American treaty the provision for good offices, it was to the United States, as a thoroughly disinterested yet friendly power, that both Korea and China began to look in times of adversity. While no similar provision was included in any treaty between the United States and Japan, nevertheless, the very intimate and friendly relations of Japan with the United States served a similar purpose so that the United States for many years occupied towards Japan a position very similar.

Before tracing the subsequent actions of the government of the United States, in the fulfillment of this peculiar relation, it will be well to review the circumstances which led to the insertion of these clauses into the treaties.

The awkward phraseology of the clause in the treaty with China is accounted for by the fact that it was written by a secretary of the Chinese Commissioners.

The circumstances were tragic. For fourteen years the Chinese Empire had held the foreign powers at bay, limiting them to the five open ports,

and treating their representatives as well as their subjects or citizens with very little respect. Meanwhile, the Empire had been torn with the greatest rebellion the world has ever known. At length England and France rose in wrath. Russia and the United States, while pledged to use only peaceful measures, were in entire agreement that the disdainful, conceited, exclusive policy of China must end. The English and the French occupied Canton, sailed north and reduced the Taku forts in the Pei-ho, and presented themselves at Tientsin with the threat that only the appearance of Chinese plenipotentiaries could prevent an advance upon Peking and upon the Emperor himself. The Russians and the Americans, whose negotiations with the Chinese had been interrupted by the battle of Taku, followed Lord Elgin and Baron Gros to Tientsin, and resumed the negotiations under circumstances made more favorable by the recent Chinese defeat.¹

Lord Elgin was inexorable. Relentlessly he forced the Chinese Commissioners to retire from one contention after another until it seemed that they were about to sign away their sovereign rights. He demanded the right of diplomatic residence in Peking, and the opening of the Yangtse for trade; it was plain to the Chinese Commissioners that the troubles of China would be multiplied as the foreigners overran the Empire and the possible points of irritation were infinitely multiplied. While the Chinese were in this mood, the Americans brought the final draft of the American treaty to them for approval. A Chinese secretary seized his brush and wrote into the American treaty the clause to which our attention is called.²

The circumstances under which a similar clause was inserted into the American treaty with Korea were equally dramatic. The United States made its first effort to negotiate such a treaty in 1871.

Before approaching the government of the country directly, Mr. F. F. Low, the American Minister at Peking, had taken the matter up with the Chinese authorities in Peking, inviting their approval and good offices. This seemed important because of a somewhat evanescent claim to suzerainty over Korea which was asserted by China whenever it did not involve the assumption of any liability for Korean bad behavior. The expedition of 1871 failed utterly, and Mr. Low became convinced that this was in no small part due to the failure of the Chinese Government to give it a sincere approval.³

¹ Journal of S. Wells Williams; Journal of the North-China Branch of the Royal Asiatic Society, Vol. XLII, 1911, p. 61; W. A. P. Martin, *Cycle of Cathy*, p. 185, gives a different and probably inaccurate account of the incident.

² For the details of the negotiations of William B. Reed, the American Minister, and S. Wells Williams, the secretary of the legation, see Reed Correspondence, S. Ex. Doc. 30, 36-1; also the Williams Journal.

³ William Elliot Griffis, *Korea, the Hermit Nation*, Chap. XLVI; *Foreign Relations*, 1871, p. 73, Low to Fish, Nov. 22, 1870; p. 111, Low to Fish, Apr. 3, 1871; p. 116, Low to Fish, May 31, 1871; p. 121, Low to Fish, June 2, 1871; p. 124, Low to Fish, June 15, 1871; p. 142, Low to Fish, July 6, 1871.

Having tried to approach the Koreans through China, and having failed, the next attempt to make a treaty with Korea was directed through Japan. In 1880, Commodore R. W. Shufeldt entered the harbor of Fusan in the U. S. S. *Ticonderoga*, armed with credentials to negotiate a treaty, and fortified with letters of introduction from Japan. These letters were significant, for four years before the Japanese had succeeded in negotiating a treaty with Korea in which was inserted: "Chosen, being an independent state, enjoys the same sovereign rights as does Nippon." In other words, Japan had secured from Korea a statement which undermined the assertion of suzerainty made by China. The attempt of Shufeldt to deal with Korea through Japan, was an indication that the United States shared, with reference to Korea, the views held by China's rival.⁴

The first Shufeldt Mission failed as completely as the Low-Rodgers Mission had failed, and many well informed people believed that it had failed because the Japanese did not, any more than the Chinese, desire to see Korea opened freely to the trade of all nations.

At any rate Li Hung Chang did not overlook the implications to be found in the fact that an American Commissioner to Korea had carried a letter of introduction from Tokio. Already the relations between China and Japan were becoming strained over Korea. Russia was also pressing down upon China; the Kuldja dispute was not settled. The astute Viceroy foresaw the struggle with both Japan and Russia in which China would have to engage at no very distant day in order to maintain the asserted suzerainty over Korea. Looking at the peninsula with a soldier's eye, Li Hung Chang saw in Korea the outer ramparts of the Chinese Empire. Whoever held Korea could be a formidable menace to China. But the Viceroy knew that, if the matter were to come to blows with either Japan or Russia, China unaided, would be quite unable to maintain its claim over Korea.

Facing this difficult political situation, Li lost no time in sending an invitation to Commodore Shufeldt to come to Tientsin. Even before a conference took place, he intimated to the American Commissioner that China would give assistance in securing a treaty between the United States and Korea. The Viceroy would appear to have been moved by the following considerations: (1) the opening of Korea could not long be postponed and therefore it was better that the first treaty, which would be the model for the others, should be with the United States; (2) it might also be possible to effect a treaty by which the United States would in some measure become a guarantor that Korea would not be conquered, or sequestered by a third power.

⁴ Charles Oscar Paullin, *The Opening of Korea by Commodore Shufeldt*, *Pol. Sci. Quart.* Vol. XXV, No. 3, pp. 478 ff.; *China Despatches*, Vol. 55, No. 21, Angell to Secretary of State, Sept. 27, 1880; Vol. 57, No. 30, Holcombe to Secretary of State, Dec. 19, 1881.

Commodore Shufeldt returned to China in the latter part of 1881 and spent the winter in Tientsin where he had frequent conferences with Li Hung Chang and various drafts of a proposed treaty with Korea were drawn up and compared. The Viceroy's first draft contained the good-offices clause, and in all the various revisions it was retained. The treaty was approved in its final form by Li Hung Chang, sent to Korea with his approval, and Shufeldt followed a day later. He experienced no difficulty whatever in securing the signatures of the Korean Commissioners. The Chinese, as well as the Koreans, were delighted; the Japanese were in equal measure aggrieved. A few years later, however, the Japanese were well pleased for they saw in the treaty, the text of which assumed the independence of Korea, an underwriting of their treaty of 1876.

Such, in its briefest form, was the situation when the United States engaged to use its good offices for Korea.⁵

The impression is so wide-spread that the United States proved a false friend in these engagements to two weak and defenceless states that it is especially important to note the actual history relating to them.

TIENTSIN, 1859

In the summer of 1859, the representatives of Great Britain, France and the United States met in Shanghai prepared to exchange the ratifications of the treaties of Tientsin. The British and the French were intent upon proceeding to Tientsin, with naval and military escorts suited to their dignity, and thence advancing to Peking where the ratifications were to be exchanged. The Chinese were equally intent on preventing the missions from proceeding to Peking by way of Tientsin, and were hardly less reluctant to have the missions accompanied by more than a very modest guard. The British were very insistent, and very impatient. It is, indeed, difficult to resist the conclusion that they were bent upon picking a quarrel. They accused the Chinese of bad faith and of being unwilling to admit the passage of the missions to Peking. The Chinese replied that they were

⁵ Reports of the Shufeldt negotiations with Li Hung Chang and with the Korean Commissioners are to be found in the *China Despatches*, Vols. 55, 57, 58, 59, filed according to dates; Angell to Secretary of State, No. 30, Oct. 11, 1880; No. 33, Oct. 22, 1880; Holecombe to Secretary of State, No. 30, Dec. 19, 1881; No. 37, Dec. 29, 1881; Shufeldt to Secretary of State, July 1, 1881, Jan. 20, Jan. 23, Mar. 11, Mar. 28, April 10, April 28, May 13, May 22, May 24, May 29, June 8, June 12, and June 26, 1882.

For the international relations of Japan throughout the period under discussion see article by Nagao Ariga on "Japanese Diplomacy" in Alfred Stead [Ed.], *Japan by the Japanese*, London, 1904, Chap. XI. This chapter, an unblushing account of the motives and methods of Japanese diplomacy from 1860 to 1900, contains evidence of having been prepared from official records, and may be accepted as semi-official in its statements. References to this chapter in the following pages would be so numerous as to be wearisome, and are, therefore, except in a few cases, omitted.

willing that the ratifications be exchanged in Peking, but the path by way of Tientsin was barred.⁶

The British and French envoys attempted to force their way up to Tientsin past the Taku Forts. On June 25, 1859, the batteries opened upon each other and after a bloody battle in the midst of which was born the famous "blood is thicker than water" incident,⁷ the allies were forced to retire. The United States Minister, John E. Ward, who was by no means an impartial spectator of the battle, and yet who was bound to the strictest neutrality by his instructions, succeeded in getting into communication with the Chinese and experienced little difficulty in reaching Peking by a route which the Chinese had selected.

Meanwhile, the Chinese, becoming alarmed by their success at Taku and by the ominous silence which followed, invited the good offices of Minister Ward to mediate with the representatives of England and France, with a view to peace.⁸ Ward replied that even before his services had been requested he had tried to mediate, but that at that time there had been no one willing to receive his message. He was still disposed to use his good offices if they were requested, but suggested that it would be well for the Chinese first to ratify the treaty. Notwithstanding this apparent desire to deal with the United States on a basis of peculiar friendship. Ward and his party were miserably treated at Peking. When he returned to the South, he wrote in a private letter to Secretary of State Cass, February 13, 1860,⁹ that he felt it to be his duty to keep aloof from the approaching struggle unless his good offices were again requested. But the Chinese were at that time too distracted to think of such measures and as for the British and the French, they would have scorned any other than military measures. They were determined to administer to China such a chastisement as the Empire would never forget, and they succeeded completely in the autumn of 1860.

TSUSHIMA, 1861

The second occasion for the mediation of the United States in Asia did not fall directly under the provisions of any treaty and yet a note of it is important for it shows that in its desire to seek peace and the welfare of the

⁶ The British despatches, and the British and French historians all unite in the indictment of bad faith on the part of the Chinese. See, Correspondence with Mr. Bruce, 1859; correspondence respecting China, 1859-60; Cordier, *Expédition de Chine*, 1860; Douglas, *Europe in the Far East*, p. 113 ff.

The American records, however (see Ward Correspondence, S. Ex. Doc. 30, 36-1, pp. 575 ff., particularly p. 611; Williams Journal, p. 143), make it practically certain that the Chinese were acting in all sincerity and according to the provisions of the treaty.

⁷ For brief account, see U. S. Naval Institute Proceedings, Vol. 40, p. 1085.

⁸ Ward Correspondence, Desp. of Aug. 20, 1859, p. 594. Williams Journal, p. 153.

⁹ China Despatches, Vol. 19, Ward to Cass, Feb. 13, 1860.

Asiatic States, the United States was bound by the spirit more than by the letter of a treaty.

In 1861 Russia occupied the Island of Tsushima midway between Japan and Korea. The island was of the utmost strategic importance, for it commanded the Sea of Japan. (It was in this vicinity that Admiral Rodjestovsky's fleet was destroyed by the Japanese May 27-8, 1905.) The Russians built barracks and planted seed, as though they had every intention of remaining permanently.¹⁰ Townsend Harris, American Minister in Yeddo, reported the presence of the Russians to Secretary of State Seward, October 7, 1861. He wrote:

For the last eighteen months many officials, English and French, and civilians and naval men, have frequently declared that war with Japan was inevitable, and that it could only end in the partition of the country (Japan). It is said that the Russian Commander justified his action by referring to those declarations, adding that he remains at Tsushima solely for the purpose of preventing its falling into the power of the English or French.¹¹

Shortly after this Mr. R. H. Pruyn arrived in Japan to relieve Harris. Seward, whose whole Far Eastern policy is worthy of careful study, wrote to Pruyn, with a confidence in his ability and in the good-will of Russia which now seems astonishing, as follows:

If the occupation of Tsushima still is an object of anxiety to his Majesty the Tycoon, I will at once call the attention of the President to the matter, and with his authority which I doubt not will be granted, I will, in the name of this government, as the friend of Japan, as well as of Russia, seek from the latter explanations which I should hope would be satisfactory to Japan.¹²

But before this proposal, so significant as an item in American history, reached Japan, Admiral Sir James Hope, supported by a formidable fleet, had ordered the Russians to leave the island and they had obeyed. Meanwhile the Japanese, who had other matters of dispute with Russia, had entered into friendly negotiations with the great state which had recently become their neighbor, and the good offices of the United States became unnecessary.

It cannot be denied that the action of the British fleet was more appropriate for the occasion than the offer of Mr. Seward. The difficulties of securing the consent of Russia to the mediation of any of her Far Eastern projects became evident to the United States only a few years later.

SAKHALIN, 1870

Russia, unceremoniously driven from Tsushima, was all the more intent on securing a clear title to the island of Sakhalin, which lies along the coast

¹⁰ Griffis' *Hermit Kingdom*, p. 205; Douglas' *Europe in the Far East*, p. 190.

¹¹ *Japan Despatches*, Vol. 4.

¹² *Japan Instructions*, Vol. 1, Feb. 5, 1862.

of Siberia southward from the mouth of the Amur. The Russians had lodged a claim for this island as early as 1804.¹³

In September, 1870, after long and fruitless negotiations with Russia, in which Japan was inducted into some of the most questionable methods of European diplomacy, the latter country made a formal application to the United States, through United States Minister C. E. DeLong, for mediation, and Secretary of State Fish immediately took the matter up in an informal way with Russia.¹⁴ Through the American minister in St. Petersburg, Russia replied graciously, explaining that it would not be possible to submit the matter to mediation because a precedent would thus be established which some unfriendly European powers might subsequently turn to the disadvantage of Russia.

Meanwhile, the Japanese evidently placed little reliance on the effective good offices of the United States for, without notifying the American Minister, they took the matter up with Russia directly, and invited her to send a plenipotentiary to Yeddo to settle the matter.

MARIA LUZ CASE, 1872.

Two years later, Japan accepted a plan of mediation in the *Maria Luz* case.¹⁵

A Peruvian coolie ship from China was forced to put in at Yokohama. The Japanese promptly freed the coolies. Peru sought the good offices of the United States in the settlement of the consequent claim against Japan. The American government accepted the duty with the express stipulation that it could do nothing which would imply approval of the coolie trade. At the suggestion of the United States, the claim was referred to the Emperor of Russia, who awarded the decision to Japan, May 29, 1875. The reference of this matter to Russia became especially easy because in 1864 Mr. Pruyn had agreed to submit a disputed claim of the United States against Japan to the arbitration of the Czar. As a matter of fact the American claim had been settled without reference to St. Petersburg, but the discussion had given the United States an opportunity to show its willingness to conform its practice to its preaching.¹⁶

AMERICAN POLICY IN THE FAR EAST

The above noted instances of the use of good offices are of relatively slight importance except by way of preface to the very important disputes

¹³ For a history of the controversy see Stead, *op. cit.* pp. 149 ff.

¹⁴ Japan Despatches, Vol. 13, No. 7, Jan. 11, 1870; Japan Instructions, Vol. 1, No. 85, Jan. 17, 1871; Russia Instructions, No. 65, Nov. 11, 1870; Russia Despatches, No. 91, Dec. 9, 1870.

¹⁵ Moore's Digest, Vol. 2, p. 655.

¹⁶ Jackson Payson Treat, *Japan and the United States*, pp. 70, 100, 101; Treat, *Early Diplomatic Relations between the United States and Japan, 1853-65*, p. 249; *Diplomatic Correspondence, 1863*, II, p. 1079; *For. Rel., 1873*, Vol. 1, p. 613.

which arose in the following twenty-five years. They served, however, to introduce the principle of mediation into Far Eastern questions, and they revealed the disposition of the United States at a time when all of the Oriental states were receiving from western powers lessons in diplomacy and international relations of a much less elevated sort.

In the events which occurred after 1872, the United States stood out preeminently as a disinterested peace-maker. This rôle suited the American spirit as it was being exhibited in domestic affairs and in trans-Atlantic relations; it was, moreover, the cornerstone of American policy in Asia. It was clearly seen that the interests of the United States could be only injured by war. War between Japan and China would result in the weakening of both nations, and would probably lead to the intervention of European powers in their own interests. The United States desired above all else strong and progressive native governments in Asia. War would paralyze progress and further impoverish the nations which joined in it. War between any western and any eastern power would be even more disastrous. American national interests, therefore, happily coincided, as they do today, with the highest welfare of the Asiatic states.

Indeed, one may indulge at this point in a very sweeping generalization. There were, and are, two possible general policies for the foreign powers in the Far East. One is to keep the Asiatic states in as weakened a condition as possible, with a view to making commercial conquest easy. The other policy is to assist these nations to achieve the greatest possible national strength, with a view to the building up of strong self-supporting and self-governing sovereign states. The American policy in Asia has uniformly been of the latter sort, and at times the United States has stood absolutely alone in the advocacy of such a course. Even today there are not a few whose proposals of policy in Asia rest upon the assumption that a weak East will help in the maintenance of a strong West. Furthermore, it is between these two policies that Japan, preferring to count herself as a power rather than as an Asiatic state, is halting. The question before Japan is: Does her national well-being require a weak or a strong China? This is but another phase of the older question asked by the western powers when they inquired whether their well-being required a weak or a strong Asia in which Japan was considered as an integral part.

Perhaps the best proof of the sincerity of this characteristic American policy of strengthening Asia has been its repeated and long continued efforts to introduce mediation and arbitration into the ominous Asiatic disputes.

One other general consideration is important for the understanding of the peace-making rôle of the United States in Asia. When the foreign powers appeared in the Far East in force after the Crimean War, Eastern Asia was, politically, in a nebulous state which might be compared to that of a solar system before the orbits of the planets had become fixed or the

satellites properly distributed. There were certain central masses with a moderate degree of specific gravity, and there were also smaller masses which swung on irregular orbits in between the larger spheres, influenced in their movements by each of the larger masses, but still not wholly attached to any larger neighbor. The large spheres were China, Russia in Asia, England in Asia, and Japan. The potential satellites were the islands off the coast of Asia—Sakhalin, Yesso, Tsushima, the Bonin Islands, the Lew Chew group, Formosa—and, the so-called tributary states surrounding China—Burmah, Annam and the regions near it, Tibet and Korea. Before the Europeans came and attempted to apply the rules of international law, these regions and islands had given to the larger Asiatic states only a moderate degree of trouble. Communications were difficult before the arrival of the steamship and the cable and both China and Japan were quite content with the political *status quo*. But the entrance of the Europeans and their modern contrivances radically changed the situation. Immediate reasons appeared for a closer organization of the politically nebulous East. The result was a consolidation of Japan and China, respectively, and then a proportionate increase in the power of gravitation by which these masses pulled upon the intervening islands and the outlying regions. The laws of physics operated in international matters. The pull upon Formosa, the Lew Chews,¹⁷ Korea, Burmah, Annam, etc., was in direct ratio to the specific gravity of the neighboring masses, and in inverse ratio to the distance. In this process of organization, China fared badly because, while its mass was great, it was also nebulous and loosely organized, whereas Japan, Russia in Asia, England in Asia, and France in Asia, although relatively small, were more compact and of greater political specific gravity. It was, of course, inevitable that between these pulls and counter-pulls collisions would be inevitable. In these collisions the interests of the United States were seldom benefited. War of any sort meant the impoverishing of peoples, the sequestration of territory, the upsetting of markets, and presumably the closing of doors. While it is undeniable that the United States has received some benefits from some of the wars in Asia since 1839, it seems more reasonable to believe that the best interests of the United States in every case where there has been a conflict of arms would have been better served by peace. At any rate, the assumption that this would be true underlay American policy in the Far East from the very beginning.

FORMOSA, 1874

In 1874, Japan and China came into collision over the Island of Formosa. Many Japanese had already ear-marked the island for Nippon, for it commanded one avenue of the trade route to north China and Japan. Indeed, Japanese had already laid out, somewhat informally, a plan of

¹⁷ Also spelled Loo Choo, Liu Chiu; Japanese, Riu Kiu.

annexation or conquest of territory from the mouth of the Amur southward, which included practically all that has in the last fifty years been obtained.¹⁸

In 1874, Japan finding it necessary to make war to avert a revolution chose between Korea and Formosa and preferred the latter because of its warmer climate and its sugar cane. Japan confronted China with the principle of international law that sovereignty over territory was not to be recognized where the power claiming sovereignty did not exercise the functions of government. To this claim China replied with a quotation from her classics which she understood better than international law. Thus wrote Prince Kung to the Ministers of the Japanese Department of Foreign Affairs, May 14, 1874:

Formosa is an island lying far off amidst the sea and we have never restrained the savages living there by any legislation, nor have we established any government over them, following in this a maxim mentioned in the *Rei Ki*: "Do not change the usages of a people, but allow them to keep their good ones." But the territories inhabited by these savages are truly within the jurisdiction of China.¹⁹

Japan found a pretext for her war on Formosa in the murder by the aboriginal inhabitants of the island of some ship-wrecked Lew Chew Island sailors. Unfortunately, the American Minister in Japan, who greatly sympathized with the Japanese in their aspirations, was sufficiently compromised in the planning of the expedition so that his recall became necessary. Three Americans were engaged by the Japanese to assist in the expedition and an American steamer was chartered as a transport. However, before the expedition left Nagasaki the Americans were ordered to be detached from the party, and the American steamer was returned to its owners. The action of the American government was somewhat embarrassed by the fact that no formal declaration of war existed, but the Chinese government expressed satisfaction at the measures taken to restrain American citizens from assisting Japan.

In October, 1874, a Japanese envoy arrived in Peking to settle the Formosan dispute. There was a war of words and then a rupture of the negotiations. As the Japanese envoy was about to leave Peking, Dr. S. Wells Williams, suggested arbitration but the envoy stated that the matter was "too complicated" for arbitration and was very unlike the *Maria Luz* affair.²⁰

But the Japanese were not to be permitted to settle the Formosan affair in their own way. Sir Thomas Wade, the British Minister, had already, so it is believed, intimated to the Japanese that Great Britain would not view

¹⁸ The evidence for this statement is to be found in Walter Wallace McLaren, *A Political History of the Meiji Era*, p. 195 ff.; Stead, *op. cit.*, Chap. XI.

¹⁹ China Despatches, Vol. 36, No. 55, Aug. 22, 1874, Williams to Fish.

²⁰ China Despatches, Vol. 37, No. 70, Oct. 29, 1874, Williams to Fish.

the Japanese occupation of Formosa with satisfaction owing to the close trade relations of Formosa with the British merchants in China, and now he intervened and became the mediator of the dispute. An agreement was signed October 31, 1874.²¹

LEW CHEW ISLANDS, 1879

Closely associated with and intimately related to the Formosan dispute, was the controversy over the possession of the Lew Chew Islands, which lie north of Formosa, and command another avenue to the sea-borne trade with China.

The Lew Chews were one of those satellite states like Korea, Annam, Siam, and Burmah. The Lew Chewians had their own king, but he received investiture from the Emperor of China, and further testified to his dependence by sending periodical tribute-bearing embassies which handed over their gifts to the customs *tautai* at Foochow, by whom they were sent to Peking.²²

The American relation to the Lew Chew controversy was more intimate than to the Formosan question. In 1854, Commodore Perry had made a treaty with the King of the Lew Chews in which the suzerainty of China was not recognized except by the fact that the treaty was dated according to the Chinese calendar and was written in Chinese. Perry regarded the Lew Chews as of great strategic importance and it is to be feared that his plan for the future of the Lew Chews contemplated something very like an American protectorate over the islands. He saw in Great Lew Chew a possible American "Malta," or "Colombo," or "Hong-kong." In these days it is difficult for Americans to realize the force of the arguments which Perry used, but at that time American ambitions in the Pacific, while by no means a part of official American policy, were most pronounced.²³

The Japanese also had a claim upon the Lew Chews because of the fact that the inhabitants of the islands had been accustomed to pay tribute yearly to the Prince of Satsuma. When feudalism was abolished in Japan, this claim of Satsuma upon the islands was vested in the Mikado, and the Japanese, who had not overlooked the strategic value of the islands, as well as the attention which Commodore Perry had paid to them, proceeded to assert their authority over the Lew Chews to the exclusion of the historic

²¹ Parliamentary Papers, China No. 2 (1875), Correspondence respecting settlement of the difficulty between China and Japan in regard to the Island of Formosa. Further Correspondence presented Mar. 9, 1875. Foreign Relations, 1875, p. 221, Williams to Fish, Nov. 12, 1874.

²² For a discussion of this most complicated question of the exact status of the Lew Chews *vis à vis* China, see Foreign Relations, 1880, p. 194, Dec. 11, 1879, Seward to Secretary of State.

²³ Perry Correspondence, Sen. Ex. Doc. 34; 33-2, pp. 12 ff., 28, 29, 30, 31, 32, 66, 81, 108-110, 112, 174.

Chinese claim of suzerainty. The conflicting claims of China and Japan were a subject of discussion for many years. In the treaty between China and Japan in 1874, for the settlement of the Formosan trouble, Japan cleverly inserted the following sentence: "The raw barbarians of Formosa once unlawfully inflicted injury on the people *belonging to Japan*, and the Japanese Government, with the intention of making the said barbarians answer for their acts, sent troops to chastise them." The treaty also stated that Japan had acted justly in the matter. Thus Japan cut the ground from under the Chinese claim of suzerainty over the Lew Chews, for the people referred to as belonging to Japan were Lew Chew sailors.²⁴ The Chinese claim, in the judgment of the Japanese, no longer had a standing in international law, and when the Chinese discovered the way in which they had been outwitted, they fell back on sullen defiance. In 1879, the Lew Chew king was deposed by the Japanese because his emissaries had been seeking the good offices of the American and other ministers in Tokio, with a view to having the old relationship to China restored. The United States had contented itself, when Japan formally annexed the islands, with receiving assurances from Japan that American rights in the islands would in no way be disturbed, and never interfered with the program of Japan, regarding the controversy as purely between China, the King of the Lew Chews and Japan.

The points of irritation between China and Japan multiplied after the Formosan affair in 1874, and when General Grant visited Peking in 1879, the two nations were on the point of war. Grant saw very clearly that the European nations might seize the opportunity to enhance their own interests. It was, therefore, a matter of satisfaction to General Grant when the Chinese proposed and the Japanese agreed to submit the Lew Chew question to mediation.

After many conferences with the Chinese in Peking and a thorough review of the question in Tokio, General Grant wrote a letter, August 18, 1879, to Prince Kung, practically Prime Minister of China, which, before being sent, was shown to the Emperor of Japan and received his approval.²⁵ In this letter Grant submitted the following proposals: (1) China to withdraw certain threatening and menacing dispatches which had been addressed to Japan on the subject; (2) each country to appoint a commission, and the two commissions to confer on the subject; (3) no foreign power to be brought into the discussion, but in case the commissions could not agree they might appoint an arbitrator whose decisions should be binding on both Japan and China.²⁶

²⁴ Stead, *op. cit.*, p. 171.

²⁵ China Despatches, Vol. 61, No. 33, Oct. 9, 1882, Young to Frelinghuysen.

²⁶ John Russell Young, *Men and Memories*, Vol. 2, pp. 294-5. John Russell Young, *Around the World with General Grant*, Vol. 2, pp. 410-412, 415, 543-46, 558-60.

General Grant then took the opportunity to point out to China the necessity for peace. His language is interesting for its earnestness and as an indication of General Grant's conclusions on the impending conflict in Asia. He wrote:

In the vast East, embracing more than two-thirds of the human population of the world, there are but two nations even partially free from the domination and dictation of some one or other of the European Powers, with intelligence and strength enough to maintain their independence—Japan and China are the two nations. The people of both are brave, intelligent, frugal, and industrious. With a little more advancement in modern civilization, mechanics, engineering, etc., they could throw off the offensive treaties which now cripple and humiliate them, and could enter into competition for the world's commerce. . . .

Japan is now rapidly reaching a condition of independence, and if it had now to be done over, such treaties as exist could not be forced upon her. What Japan has done, and is now doing, China has the power—and I trust the inclination—to do. I can readily conceive that there are many foreigners, particularly among these interested in trade, who do not look beyond the present and who would like to have the present condition remain, only grasping more from the East, and leaving the natives of the soil merely "hewers of wood and drawers of water" for their benefit. I have so much sympathy for the good of their (the foreigner's) children, if not—for them, that I hope the two countries will disappoint them.

It has been stated, and probably correctly, that General Grant went even so far as to recommend that Japan and China form an alliance against the western powers.

The Government of the United States, fearing that the good offices of the United States were being accepted by the two powers under a misapprehension that General Grant in some way officially represented the United States, instructed its representatives to make clear that he had acted in an entirely personal capacity.²⁷

Both nations accepted General Grant's proposal and the two commissions met in Peking. After three months' discussion, they arrived at a settlement according to which the islands were to be divided.²⁸ However, on the day fixed for the signatures, China suddenly withdrew the question from the commission and referred it to Chinese superintendents of trade at the northern and southern districts.²⁹

"A glaring instance of international treachery" on the part of China, the North China Daily News (Jan. 27, 1883) called it, but it was subse-

²⁷ Foreign Relations, 1881, p. 243, Apr. 4, 1881, Blaine to Angell.

²⁸ It has been frequently stated (cf. Robert P. Porter, *Japan, the Rise of a Modern Power*, p. 119; H. B. Morse, *op. cit.*, Vol. II, p. 322) that General Grant himself proposed the partition of the islands between China and Japan. As a matter of fact, the most important point in the mediation by General Grant was that China and Japan should, if possible, settle their own disputes without the admission of any European into the controversy.

²⁹ Foreign Relations, *ibid.*, p. 229, Jan. 25, 1881, Angell to Secretary of State. See 1873, pp. 188, 553, 564; 1879, p. 637; 1880, p. 194, for details of entire controversy.

quently discovered that Japan, not content with the settlement of the Lew Chew question by itself, had, at the last minute, insisted upon the inclusion in the agreement of some additional provisions conferring new ports and trading privileges in China upon Japan.

China had been predisposed to settle the matter in 1880 because of the then strained relations with Russia, although the surrender of Chinese territory to a foreign power during the minority of the Emperor was a risk such as few Chinese statesmen would have dared to assume. As soon as the trouble with Russia was settled, the Lew Chew question again became the subject of great irritation. Li Hung Chang outlined China's position as follows: China would not under any circumstances consent to the destruction of the autonomy of the islands, or the division of them between Japan and China. He desired that the islands should be restored to their original condition of tributary states to both China and Japan. Failing this, he thought China would agree to enter into treaty stipulations with Japan, by which both powers would guarantee the absolute independence of the Lew Chews.⁸⁰

In 1882, Li Hung Chang was prepared to fight Japan for the possession of the islands and war seemed imminent. The international situation remained the same. A war between China and Japan would be destructive to the best interests of both nations, and also detrimental to the interests of the United States. John Russell Young, then American Minister in Peking, who, as a newspaper correspondent, had accompanied General Grant around the world, and who was on very intimate terms with Li Hung Chang, strongly urged the Viceroy not to enter into hostilities with Japan. The question had passed beyond the stage where it might be controlled by considerations of justice. China had signed away her rights in the treaty of 1874. Japan had formally annexed the islands and had been administering them for several years. But more important even was the fact that China was in no condition to enter a war. Peace at any price was the only safe policy for the Empire.

The Lew Chew question was soon lost in the greater problem which confronted China in the aggressions of France upon her southern border, and the annexation of the Lew Chews by Japan became a *fait accompli*.

THE FRANCO-CHINESE WAR

While China was engaged in the controversy with Japan over the Lew Chews, other and even more serious problems arose with the foreign powers—with England over Burmah and the murder of Margery in 1874, with France over Tonquin, at about the same time, with Russia over Kuldja in 1879, and then again with France over Annam in 1884. Indeed, it was these distractions, probably, which diverted China from making war on

⁸⁰ China Despatches, Vol. 58, No. 19, Nov. 24, 1881, Holcombe to Secretary of State.

Japan on account of the Formosan affair, or the Lew Chews, or Korea. To none of these larger disputes except the one with France was the United States in any way related.

At one time France appears to have selected Korea as a field for exploitation and even for annexation. In 1866, the French Chargé d'Affaires in Peking even announced to the astonished Yamen that France was about to annex Korea, but this representation was unauthorized by France, and a few years later France would seem to have concluded to seek territorial expansion only in the south. France made a treaty with Annam in 1862, and made a second one twelve years later in which France recognized the complete independence of Annam, and also acquired Cochinchina. China protested because the treaty, in effect, made France rather than China the suzerain over Annam. The matter remained in dispute until the latter part of 1883, when Li Hung Chang signed a convention with France according to which the Chinese troops were to be withdrawn from Annam, and the two nations were, jointly, to guarantee the independence of this territory which for two centuries had paid tribute to Peking. There was a sudden change of government in France and the convention was repudiated at Paris. The new French cabinet proposed an expedition to China, and a liberal credit was voted. Then a French officer, Riviere, was killed in an engagement with the Black Flags, an irregular company of troops which were supposed to be more or less supported by the Chinese government. War became all but inevitable. Indeed, it seems quite plain that France was seeking to provoke war for the sake of securing more territory in the South.

China, stung by the charges of bad faith, defiant and unhumbled, still quite ignorant of the weakness of the Empire, perhaps misled by encouragements from Germany and England, and quite underestimating the strength of France, was determined to yield no territory to France, and also not to yield suzerainty over Annam. At this point, John Russell Young, the American minister, whose relations with Li Hung Chang had become very intimate and confidential, and whose relations with the Tsung-li Yamen were cordial, pleaded for peace. The question was, as he tried to explain, not whether China was in the wrong or in the right, but whether she could afford a war with a foreign power. She had relatively few troops with a modern training, and they were in the North. There was no railroad to transport them to Annam, and the Chinese navy could not protect them by sea. France was studiously cultivating Japan, with a view to securing joint action against China. Russia was an eternal menace to the Chinese northern frontier. England was busy in Egypt, and presumably not unwilling that France should become involved in China. For China itself, war could only end in disaster.²¹

²¹ Mr. Young refers to this conference in *Men and Memories*, *op. cit.*, p. 308.

At length, the councils of Mr. Young had their effect and he was asked to invite the good offices of the President to secure a mediation of the dispute.

To this request, Secretary of State Frelinghuysen replied, by cable, July 12, 1883:

This government cannot intervene unless assured that its good offices are acceptable to both. In such case would do all possible in the interests of peace. The United States Minister at Paris has been directed to sound French Government, and ascertain if it will admit our good offices in the sense of arbitration or settlement.

The answer was not long delayed. France declined to accept the good offices of the United States.³²

The French, forthwith, proceeded to declare a blockade of Tonquin and Annam, and although negotiations continued at Shanghai, the troops of the two nations came into active conflict in December, 1883. On May 11, 1884, Li Hung Chang signed with Commandant Fournier a convention which was intended by the Chinese to be the protocol to a treaty. In the Fournier Convention, France waived a claim for indemnity in return for the acknowledgment of her territorial and commercial claims in Annam. There was entire disagreement between the Chinese and the French as to the interpretation of this protocol, and even as to its authorized text, and on June 23rd, 1884, Colonel Dugenne and twenty-two French soldiers were killed in an engagement at Baclé.³³

Again China appealed to the good offices of the United States, and again (July 20, 1884) Minister Young referred the matter to Washington. China wished to submit to arbitration the question as to whether she had acted in bad faith with reference to the Fournier Convention.

Again France declined to admit the good offices of the United States.

China was thus brought face to face with war. The American Minister renewed his efforts to find a peaceful solution, feeling that peace at any price which France might demand would be better than conflict. At length Prince Kung asked Mr. Young to go to Shanghai, see M. Patenôtre, the French representative, and obtain a settlement. China was even willing to agree to any indemnity which Young might recommend. The American Minister referred the request to Washington for approval, but Secretary of State Frelinghuysen was wary, having already been twice repulsed by France, and withheld his approval. On August 5th, Admiral Lespès at-

³² Cordier, *Relations de la Chine avec les puissances occidentales*, II, p. 399.

³³ H. B. Morse, *International Relations of the Chinese Empire*, Vol. II, pp. 353-57, who was present at the Li Hung Chang-Fournier negotiations and saw the documents, gives personal testimony as well as evidence to prove that the French Government was guilty of extremely bad faith in the observance of this convention. His verdict is: "It is only on the ground that an Asiatic nation has no rights which the white man is bound to respect that the course of France is to be explained." For the French statement of the case, see Cordier, *op. cit.*, II, pp. 435 ff.

tacked Keelung in Formosa. After this attack, all hopes of peace vanished. The Chinese were aroused. Prince Kung was retired, and the retirement of the Prince meant the eclipse of Li Hung Chang who had clearly realized the folly of resisting the French.

Early in September, the China Merchants Steam Navigation Company which had been purchased a few years before from an American firm, Russell and Company, was resold to the former owners, and the American flag raised over the fleet of steamers. France, thus deprived of the opportunity of making a most profitable reprisal upon China, was now even less than ever willing to accept any good offices from the United States. However, the American Government kept in very close touch with the rapidly developing situation, and on several subsequent occasions was the medium of communication between Paris and Peking. Sir Robert Hart also undertook the task of mediation and after more than a year of work succeeded in bringing about the signing of a protocol, April 4, 1885.²⁴

Mr. Young, although his efforts at mediation between China and France had failed, was determined to demonstrate the good faith of the United States in its advocacy of arbitration as a means of settling disputes, and was able to secure the consent of the Chinese Government to the arbitration of the "Ashmore Fisheries Case" by the British and Netherlands consuls at Swatow. The case involved the action of the Chinese officials in depriving Dr. W. Ashmore, an American missionary at Swatow, of a fishery which he had purchased in connection with a mission. An award of four thousand six hundred dollars (\$4,600) was made to Dr. Ashmore, June, 1884.²⁵ Earlier in the same year, Mr. Young had proposed that the claims of the foreigners arising out of the riot at Canton in September, 1883,²⁶ be submitted to arbitration, but he was unable to secure the consent of the Chinese to such a statement of the disputed points as would have satisfied the British authorities.²⁷

THE SINO-JAPANESE WAR, 1894-5

Although the "good offices" clauses in both the Chinese and the Korean treaties with the United States had been placed there by the Chinese, it

²⁴ Morse, *op. cit.*, pp. 364-7.

²⁵ Moore's Arbitrations, Vol. 2, p. 1857-59.

²⁶ Foreign Relations, 1883, p. 209; 1884, p. 46; Morse, *op. cit.*, p. 320.

²⁷ For the more important details of Mr. Young's negotiations in the French controversy, see China Despatches, Vol. 65, No. 230, Aug. 8, 1883, No. 232, Aug. 16, 1882, No. 252, Sept. 7, 1883, No. 268, Oct. 8, 1883; Vol. 67, No. 308, Dec. 24, 1883; Vol. 68, No. 318, Jan. 6, 1884; Vol. 71, No. 496, Aug. 21, 1884, No. 501, Sept. 4, 1884; Vol. 73, No. 569, Dec. 9, 1884, No. 583, Dec. 22, 1884. It is difficult to explain the omission of all of these very able despatches from Foreign Relations. Perhaps the failure of Frelinghuysen's negotiations with France, together with the fact of a change of administration in 1885, explains it. There are few finer chapters in the history of arbitration than the Young-Frelinghuysen efforts in 1883-4.

cannot be denied that their presence in the treaties reflected correctly the disposition of the United States in the Far East to seek peace and to maintain the most impartial neutrality. Nevertheless, because of the chronic political instability of international relations in Eastern Asia, and because of the ulterior motives which had led to the insertion of the clauses in the treaties, these provisions were a constant menace to traditional American policy in foreign affairs, and unless rigidly interpreted by the United States could not have failed to draw the American government into armed intervention in Asia. In none of the cases already considered where the good offices of the United States were invoked does this appear but it becomes very evident when we come to the case of Korea. A few facts as to the situation will make this clear.

After 1872, it was inevitable that some day China and Japan would come into armed conflict over the possession of Korea. Indeed, the treaties of the western powers with Korea had been made upon the advice of Li Hung Chang, for the express purpose of enlisting the western powers on the side of China in its efforts to prevent Korea from being separated from China by Japan.

At least by 1885, it became evident that China and Japan were not to be permitted to settle the question of Korea without the intervention of European powers. Russia, also, wanted Korea, and the ambitions of Russia drew Great Britain into the situation. Furthermore, the general policy of the European powers before 1900, and this applied also to England before 1894, was to repress the growing strength of Japan. It is a safe generalization that all the powers, except the United States, preferred a weak Asia. This consideration led to a disposition to thwart the efforts of Japan to acquire a defensible foothold in Korea. England was disposed to see Korea remain under Chinese suzerainty. Russia sought to transfer the suzerainty over Korea from China to herself, and the attitude of Europe generally is reflected in the demand for the retrocession of the Liao-tung peninsular to China in 1895.

The American policy was quite different. It was based on the desire to see the development of a strong Asia. While the independence of all of the Asiatic states, including Korea, seemed desirable, this desire was quite subordinate, in American policy, to the growth of indigenous strength in Asia as a whole sufficient to withstand the aggressions of the foreign powers. The American treaty with Korea assumed the independence of Korea. American policy, however, went farther than that. Its effect was to separate Korea entirely from its traditional relationship to China. It would appear that the American government perceived that the shadowy and obstructive suzerainty of China over Korea would never be a source of strength to China, and would, on the other hand, be an element of weakness not only to Korea, but also to Asia as a whole. Consequently, when the question of intervention with a view to establishing the absolute independ-

ence of Korea arose, the Government of the United States found that a strict construction of its treaty obligations to China, Korea and Japan, coincided exactly with its major policy in Asiatic affairs. In the first place, the United States was friendly with all three states. It was pledged to use its good offices but these could be effective only if they were acceptable to both parties. It was therefore the duty of the United States to maintain the most scrupulous neutrality. In the second place, intervention with a view to diverting the natural course of events, appeared to be merely playing into the hands of European powers, which desired to repress Japan and also to weaken Korea with a view to the sequestration of Korean territory at some future date. To have followed this second course would have meant not only the repudiation of the friendship which had existed so long with Japan as well as with China and Korea, but it would also have meant continued armed intervention in Asia, in co-operation with European powers, and yet for the express purpose of thwarting European ulterior designs. In effect, such a course would have led to the abandonment of the traditional American policy at many points.

With these choices in mind, let us examine the course of the United States in the Sino-Japanese war of 1894-5.

Early in 1894, the Korean Tonghaks raised the standard of insurrection. While generally anti-foreign in purpose, the Tonghaks were particularly anti-Japanese. Yuan Shi Kai, as the representative of Li Hung Chang and of the Chinese Government, immediately assumed responsibility for the protection of foreigners, and it became evident that the insurrection would assume the larger aspects of a contest between China and Japan for the control of Korea. On June 22, 1894, the American Minister in Seoul was instructed:

In view of the friendly interests of the United States in the welfare of Korea and its people, you are, by direction of the President, instructed to use every possible effort for the preservation of peaceful conditions.³⁸

The Koreans, caught between the mill-stones, and quite powerless to act effectively for peace, appealed to Russia, France, England and the United States for help, and Mr. Sill, the American Minister, joined with the representatives of the other powers in asking China and Japan to agree to a simultaneous withdrawal of their troops from Korean soil. Both China and Japan refused.³⁹ On July 5th, the Korean representative in Washington asked that the President "adjust the difficulty" arising out of the fact that the Japanese Minister in Seoul had presented to the Korean King a long list of administrative reforms and was pressing that they be immediately adopted.⁴⁰ At about the same time the Chinese Government at Peking sought the good offices of England and Russia to secure

³⁸ Foreign Relations, 1894, Vol. 2, p. 22.

³⁹ *Ibid.*

⁴⁰ *Ibid.*, p. 29.

a peaceful solution. The British Minister in Peking urged, through Charles Denby, Jr., American Chargé, that the United States take the initiative in uniting the great powers in a joint protest at Tokio against the beginning of hostilities in Korea by Japan. On July 8th, Denby wired that Li Hung Chang had officially expressed the desire that the United States take the initiative as the British Minister had suggested.⁴¹

A study of these requests in the light of the history of the preceding twenty years shows their intention to have been as follows: the United States was asked, both by Korea and by China, to take the lead in preventing Japan from enforcing administrative reforms on Korea. That reform in Korea was desirable was undeniable; that China would ever effect these reforms was unlikely; that the European powers were being moved by any sincere desire to rescue Korea from the clutches of Japan for the purpose of creating in the peninsula a strong, independent Asiatic state, was equally improbable. The joint note of the foreign representatives in Seoul had failed to secure the simultaneous withdrawal of the Chinese and Japanese troops. It was evident that any intervention in the affair involved forceful intervention. Furthermore, the forceful intervention desired by Korea, by China, by Russia, by Germany, by England, was to eliminate Japanese influence in Korea for the express purpose of obstructing reform, and for the ulterior purpose on the part of some of the powers, of weakening the resistance of Asia, at the key-stone of the arch, to the aggression of Europe. In this situation the position of the United States was clear. The treaties demanded the offer of good offices. Good offices were offered and rejected. The invitation of the foreign powers to the United States was to assist them in support of a policy which would weaken rather than strengthen Asia. This was contrary to American policy.

Japan refused to heed the protest of the United States as well as those of England and Russia. On July 9th, Secretary of State Gresham told the Korean Envoy in Washington that the United States would not intervene forcibly, that the American government would not intervene jointly with the European powers, that it would maintain "impartial neutrality," but that it would seek to influence Japan in a "friendly way."⁴² Mr. Gresham expressed to the Japanese Minister in Washington the hope that Japan would deal "kindly and fairly with her feeble neighbor."

To China's request for intervention, Gresham replied advising that China offer the whole question for friendly arbitration. The American Secretary of State did not believe that Japan would resort to war. China, on her part, was not prepared to submit the entire question to arbitration. The fundamental point at issue was the validity of Chinese suzerainty over Korea. Space does not permit a discussion of that claim, but it may be asserted that it would have had a most doubtful status before any board

⁴¹ Foreign Relations, 1894, Vol. 2, p. 30.

⁴² *Ibid.*, p. 37.

of arbitration when studied in the light of the various treaties which had been made by Korea beginning with the Japanese treaty in 1876, and also when considered in the light of existing treaties between Japan and China. China had surrendered too much by 1894, and had acquiesced in too much, ever to regain a position of suzerainty over Korea.

On October 6th, the British Chargé approached the American government with a proposition for joint intervention by the United States, Germany, France, Russia and Great Britain on the basis of an indemnity to be paid by China to Japan, and the guarantee by the powers of the independence of Korea.⁴³ A month later, China formally invoked the good offices of the United States, citing the treaty of 1858, and asking for joint action with the other foreign powers. Before this invitation from Peking was received, the United States directed Dun in Tokio to inquire whether good offices would be acceptable to Japan, and the same day Gresham carefully defined the position of the United States in a note which clearly explained why the United States had been unwilling to join the European powers in intervention, as follows:

The deplorable war between Japan and China endangers no policy of the United States in Asia. Our attitude towards the belligerents is that of an impartial and friendly neutral, desiring the welfare of both. If the struggle continues without check to Japan's military operations on land and sea, it is not improbable that other powers having interests in that quarter may demand a settlement not favorable to Japan's future security and well-being. Cherishing the most friendly sentiments of regard for Japan, the President directs that you ascertain whether the tender of his good offices in the interests of peace alike honorable to both nations would be acceptable to the Government at Tokio.⁴⁴

In the above friendly warning to Japan, one reads between the lines that Gresham clearly understood the international situation. The proposals which had been made for joint intervention had been by no means disinterested. Every one of them had been directed against Japan with a view to repressing her advancing power and influence in Asia. These proposals had not been, primarily, in the interests of *any* Asiatic state, but in the interests of European political and commercial ambitions in Korea. Dressed in their best clothes, these proposals looked in the direction of a protectorate in Korea; viewed more cynically, and critically, they looked in the direction of dismemberment not merely of Korea, but also further dismemberment of China, and perhaps of Japan.

Japan, however, disregarded the admonitions of the United States, and, instead of pausing at a point where the good offices of the United States might have been valuable in saving Asia in general from a large increase of European influence, over-reached herself by continuing the war so suc-

⁴³ Foreign Relations, 1894, Vol. 2, p. 70.

⁴⁴ *Ibid.*, pp. 73, 74, 76, 77.

cessfully begun. Japan thus invited the very intervention which Gresham had expected.

The subsequent services of the United States in the actual negotiations leading towards peace need not be detailed. From the beginning of the war the United States had stood in a unique relation to both China and Japan since the American legations in Tokio and in Peking, respectively, had taken charge of the Chinese and Japanese archives. The United States became the natural channel of communications between Peking and Tokio, and a peace conference was brought about by the good offices of the United States.⁴⁵

In summary, one may note the following points: (1) The United States fulfilled its treaty obligations both to Korea and to China in the offer of its good offices, and it was by means of the United States that the conflict was terminated. (2) The United States declined to join with other powers in what looked to be an effort to save Korea, but which actually was a plan to repress Japan with a view to the increase of European advantages on the continent of Asia.

The policy of the United States was as follows: First of all to favor peace between the Asiatic states but, if peace were impossible, to favor the growth of Japanese, rather than of European, influence in Asia.⁴⁶

THE RUSSO-JAPANESE WAR AND THE ANNEXATION OF KOREA

While the discussion of the Russo-Japanese War and the annexation by Japan does not fall within the limits of this study, and cannot, until more authentic and official documents are available, be studied with precision, so far as they relate to the good offices of the United States promised to Korea under the treaty of 1882, it is not difficult to define the principles and the policy of American action. They may be outlined as follows:

(1) The good offices of the United States could be exercised only with the consent of *both* parties to the dispute. Without such consent the good

⁴⁵ Charles Denby, *China and Her People*, Vol. 2, p. 130 ff.

⁴⁶ China seems to have been prepared as early as 1895 to accept arbitration as a method of settling international disputes. It is believed that at Shimoneseki the Chinese Commissioners submitted to Japan for inclusion in the peace treaty an article drafted as follows: "In order to avoid future conflict or war between China and Japan, it is agreed that should any question arise hereafter as to the interpretation, or execution of the present Treaty of Peace, or as to the negotiation, interpretation, or execution of the Treaty of Commerce and Navigation and the Convention of Frontier Intercourse provided for in Article VI of this treaty, which cannot be adjusted by the usual method of diplomatic conference and correspondence between the two governments, they will submit such questions to the decision of an arbitrator to be designated by some friendly power to be selected by mutual accord of the two governments, or, in case of failure to agree as to the selection of said power, then the President of the United States shall be invited to designate the arbitrator; and both governments agree to accept, abide by and carry out in good faith the decision of said arbitrator." The Japanese declined to accept this article.

offices of the United States would become forceful intervention. Such intervention would, in turn, result in the exercise of the powers of a protectorate—a function which was farthest removed from the disposition or the intention of the United States in its relations with Asia. While Korea was, theoretically, not a party to the war between Russia and Japan, the United States, when such a service became acceptable, was glad to extend its good offices to both the combatants and thus to restore such a peace to Asia, as resulted from the Portsmouth Conference.

(2) But the United States was governed by a more fundamental consideration in its attitude towards the Far East. Peace and the independence of Korea were desirable, but even more important was the checking of the growing power of European nations on the western shores of the Pacific. Gresham's policy in 1894 had clearly included this consideration. It is quite evident that Mr. Roosevelt was moved by a similar motive, as was also Great Britain after 1900. The interest of Asia, it was believed, could best be served by the use of the good offices of the United States not only on behalf of an individual state, but also on behalf of eastern Asia as a whole, in the effort to check the advance of Europe. Thus, when it came to the application of this policy at the time of the annexation of Korea, the claims of Korea as an independent state appeared small when compared with the claims of Asia as a whole. The choice, unless an American protectorate were to be established over Korea—a chimerical and quixotic alternative—was between Korea as a source of strength to Japan, or as a part of Russia. With such a choice before it, there could be, if traditional policy were followed, but one answer from the United States.

There is, perhaps, room for speculation as to whether Mr. Gresham, in October, 1894, would not have achieved a greater ultimate good for Korea and for Asia as a whole if he had acceded to the proposition which came from Great Britain to join with the European powers in guaranteeing the independence of Korea. The intervention which the United States declined to support in 1894 is seen, in a somewhat different form, to be necessary in 1922, in the interests of peace in Asia. Yet, one has but to review the relation of the United States to the European powers in the years immediately following Gresham's decision, to realize that such intervention as Great Britain then proposed, could hardly have resulted in good for any party concerned. The United States was not prepared in a naval or military way, or in the condition of public sentiment, to assume such responsibilities as would have been involved. On the other hand, the part played by the United States at the time of the annexation of Korea is certainly not fairly open to the criticisms to which it has been subjected. While seeming to acquiesce in an injustice to a weak nation, the United States actually gave its tacit approval to a step in the direction of justice to Asia as a whole, for in the annexation of Korea to Japan the aggressions of Europe in Asia were curbed.

More recently it has seemed as though this traditional American policy of fostering a strong Asia had defeated its original purpose which was to safeguard American trade in an open field of competition. Japan, having profited as much by American support and assistance in the period before 1900 as she has since by the Anglo-Japanese Alliance, has shown a tendency to over-reach and to defeat the purpose which led the United States to support Asia against Europe. One may hope this is a temporary phase of purely contemporary history. Traditional American policy remains unchanged. The United States desires to see developed on the continent of Asia strong states which shall be able to meet the powers of the world on a footing of the most complete equality and sovereignty, and in the accomplishment of this purpose is as ready to use its good offices today, as it was at any time in the last century.

Indeed, is not the present conference in Washington, in so far as it is concerned with problems of the Pacific, a "good office" to Asia which is quite in accord with the Treaty of Tientsin, of 1858, as well as with traditional American policy?

AMERICAN DIPLOMACY AND THE FINANCING OF CHINA

BY GEORGE A. FINCH

Secretary of the Board of Editors

In his last annual message President Taft thus described the diplomacy of his administration: "The diplomacy of the present administration has sought to respond to modern ideas of commercial intercourse. This policy has been characterized as substituting dollars for bullets. . . . It is an effort frankly directed to the increase of American trade upon the axiomatic principle that the Government of the United States shall extend all proper support to every legitimate and beneficial American enterprise abroad."¹

His official experience in the Philippine Islands had naturally given Mr. Taft a wide knowledge of Oriental affairs and his strong feelings on the subject of American participation in them were indicated in his inaugural address of March 4, 1909 where, as a reason for advising against the reduction of the expenses of the Army and Navy, he said: "In the international controversies that are likely to arise in the Orient growing out of the question of the open door and other issues the United States can maintain her interests intact and can secure respect for her just demands. She will not be able to do so, however, if it is understood that she never intends to back up her assertion of right and her defense of her interest by anything but mere verbal protest and diplomatic note."²

Thus holding the belief that the United States would be justified in resorting to force if necessary to keep open the door of equal commercial opportunity for its citizens in China, it was logical for Mr. Taft to justify at the close of his administration as a policy which had "substituted dollars for bullets" the activities of the State Department in behalf of American enterprise in China which had become so intensified as to become popularly characterized as "dollar diplomacy." That diplomacy, it is believed, represents the maximum point to which diplomatic assistance to private investments abroad has been extended by the American Government. It will therefore be taken as a starting point for this outline, which will briefly cover also the diplomacy before that time and of the present time.

The opportunity for the application of Mr. Taft's views occurred soon after he assumed office. In May 1909 the press reported an understanding between English, French and German financial groups for a loan

¹Congressional Record, Vol. 49, Part I, p. 9.

²Congressional Record, Vol. 44, Part I, p. 3.

to China for the proposed Hankow-Szechuen Railway, which later became known as the Hukuang Railway Loan. Secretary of State Knox immediately applied by cable to the Chinese Government for the admission of American capital to participation in the loan,³ and the State Department requested certain American bankers to take a share in the loan.⁴ The diplomatic efforts of the State Department at Peking proved unsuccessful,⁵ whereupon President Taft sent a direct communication to Prince Chun, Regent of the Chinese Empire, in which the President stated that he had "an intense personal interest in making the use of American capital in the development of China an instrument for the promotion of the welfare of China, and an increase in her material prosperity without entanglements or creating embarrassments affecting the growth of her independent political power and the preservation of her territorial integrity."⁶ The personal interposition of President Taft in the negotiations resulted in the admission of America's equal participation in the loan. To Congress President Taft justified this unique and vigorous exercise of diplomatic pressure upon China in his annual message of December 7, 1909, on the ground that "this railroad loan represented a practical and real application of the open door policy" as well as because of its relation to the currency reform which China undertook in certain treaties of 1903.

In pursuance of the same policy the State Department in 1910 and 1911 assisted in the negotiation of a loan to China with which to inaugurate the new currency system, which, because of the inclusion of Russia and Belgium, became known as the Six Power Loan or Sextuple Consortium. This loan, the President explained, was originally to be solely an American enterprise, but upon the urging of the American Government, the Chinese Government admitted to participation in it the associates of the American group in the Hukuang loan.

At the end of his administration, President Taft thus defended and appraised the foregoing policy in China:

In China the policy of encouraging financial investment to enable that country to help itself has had the result of giving new life and prac-

³Foreign Relations of the United States, 1909, p. 144.

⁴"The American group, consisting of J. P. Morgan and Company, Kuhn, Loeb and Company, the First National Bank, and the National City Bank, was formed in the spring of 1909 upon the expressed desire of the Department of State that a financial group be organized to take up the participation to which American capital was entitled in the Hukuang Railway loan agreement then under negotiation by the British, French and German banking groups." (Statement by the American group, March 19, 1913, this JOURNAL, Vol. 7, p. 340.)

⁵The loan had been in course of negotiation for several years and was on the point of being finally concluded when the State Department applied for admission of American capital. The foreign bankers and the Chinese director-general of the railway objected to the delay which would be involved in reopening the negotiations to admit American participation. (Foreign Relations, 1909, pp. 144-178.)

⁶Foreign Relations, 1909, p. 178.

tical application to the open-door policy. The consistent purpose of the present administration has been to encourage the use of American capital in the development of China by the promotion of those essential reforms to which China is pledged by treaties with the United States and other powers. The hypothecation to foreign bankers in connection with certain industrial enterprises, such as the Hukuang railways, of the national revenues upon which these reforms depended, led the Department of State early in the administration to demand for American citizens participation in such enterprises, in order that the United States might have equal rights and an equal voice in all questions pertaining to the disposition of the public revenues concerned. The same policy of promoting international accord among the powers having similar treaty rights as ourselves in the matters of reform, which could not be put into practical effect without the common consent of all, was likewise adopted in the case of the loan desired by China for the reform of its currency. The principle of international cooperation in matters of common interest upon which our policy had already been based in all of the above instances has admittedly been a great factor in that concert of the powers which has been so happily conspicuous during the perilous period of transition through which the great Chinese nation has been passing.⁷

It will be well at this point to go back and consider what had been the attitude of the American Government towards assisting and protecting American investors in China previous to the so-called "dollar diplomacy." In an instruction to Mr. Denby on December 19, 1896, Secretary of State Olney stated, "You should not assume directly or impliedly in the name of this government any responsibility for, or guaranty of, any American commercial or industrial enterprise trying to establish itself in China," but that Mr. Denby should use his "personal and official influence and lend all proper countenance to secure to reputable representatives of such concerns the same facilities for submitting proposals, tendering bids, or obtaining contracts as are enjoyed by any other foreign commercial enterprise in the country. . . . Broadly speaking, you should employ all proper methods for the extension of American commercial interests in China, while refraining from advocating the projects of any one firm to the exclusion of others."⁸

A case in point was presented to the Department of State in August 1898. On the 19th of that month a copy of a contract between the Chinese Minister at Washington, acting on behalf of his Government, and the American-China Development Company was sent to the Department with the request that the Department give notice to the United States legation and consulates in China that the representatives of the company charged with carrying out the provisions of the contract "shall have recognition and protection in the performance of their duties" and that the charge of the revenues and property assigned to the loan under contract "will be

⁷Annual message, Dec. 3, 1912, Congressional Record, Vol. 49, Part I, p. 9.

⁸Foreign Relations, 1897, p. 56.

noted by this government, which will uphold the contract as a binding engagement upon the Imperial Chinese Government." In his reply of August 24, 1898, Secretary of State Day informed the company "that the Department is unable to give you such a letter as you request. While the Government of the United States is always ready to enforce the just rights of its citizens abroad, it has always declined to become the guarantors of their contracts with foreign governments. As a rule, it has declined, where such a contract was alleged to have been violated by the foreign government, to interfere beyond the exercise of good offices. This being so, still less can it assume beforehand to guarantee the execution of the contract." In its application the company had stated that the English investors will have "the usual recognition" from the British Foreign Office substantially in the form requested by the company from the Department of State. In answer to this statement, Mr. Day said: "The British Crown, which exercises the executive power in that country, possesses both the war-making power and the treaty-making power, and is therefore authorized, in matters involving relations with foreign countries, to give guarantees and to enter into engagements which the executive of the United States would not alone be competent to assume."⁹

On October 21, 1905, the Department instructed the Legation at Peking that it might forward without comment to the Chinese Foreign Office the applications of reputable American citizens for privileges and concessions.¹⁰

The actions of the Department in the period from 1909 to 1912 went far beyond, and indeed contravened the foregoing expressions of previous policy. The official representations made by Secretary of State Knox and the personal appeal of President Taft made the Government of the United States virtually a party to the application for the Hukuang Railway Loan. The initiative of the State Department in the formation of the American group to participate in the loan made the Government practically a sponsor for the actions of that group in China. Although nothing is directly contained in the published correspondence regarding the amount and kind of protection which the Department was to give to the American investors in case of a default on the part of China, the implication is unavoidable that the maximum amount of protection of which the executive was capable would be extended in the case of both the Hukuang Railway Loan and the Currency Reform Loan. Any other inference would not be fair to President Taft and Secretary Knox who were officially responsible for American participation in both transactions. Such a guarantee of the execution of a contract was expressly refused, as above pointed

⁹Moore, *International Law Digest*, Vol. VI, p. 288.

¹⁰See despatch of July 11, 1913, from Mr. Williams, Chargé at Peking, printed in *Foreign Relations*, 1913, p. 186.

out, by Secretary of State Day in his reply to the American-China Development Company in 1898. He was unwilling to assure protection beyond the exercise of good offices. Citing a long list of Secretaries of State from Secretary Forsyth in 1834 to Secretary Hay in 1899, Dr. John Bassett Moore states: "It is not usual for the Government of the United States to interfere, except by its good offices, for the prosecution of claims founded on contracts with foreign governments."¹¹ Lack of authority on the part of the Executive was given by Secretary of State Marcy as the reason for the rule in an instruction to the American Minister to Peru on May 24, 1855. He said: "It does not comport with the dignity of any Government to make a demand upon another which might not ultimately, on its face, warrant a resort to force for the purpose of compelling a compliance with it. Such a course can not, under this Government, be adopted without authority from Congress, and it is almost impossible to imagine any contract or any circumstances attending the infraction of one by a foreign government which would induce Congress to confer such an authority upon the President."¹² Other reasons in justification of the rule were given by Mr. Taft's predecessor in office. President Roosevelt, in a message to the Senate, February 15, 1905, made the following statement:

Except for arbitrary wrong, done or sanctioned by superior authority, to persons or to vested property rights, the United States Government, following its traditional usage in such cases, aims to go no further than the mere use of its good offices, a measure which frequently proves ineffective. On the other hand, there are governments which do sometimes take energetic action for the protection of their subjects in the enforcement of merely contractual claims, and thereupon American concessionaires, supported by powerful influences, make loud appeal to the United States Government in similar cases for similar action. They complain that in the actual posture of affairs their valuable properties are practically confiscated, that American enterprise is paralyzed, and that unless they are fully protected, even by enforcement of their merely contractual rights, it means the abandonment to the subjects of other governments of the interests of American trade and commerce through the sacrifice of their investments. . . . Thus the attempted solution of the complex problem by the ordinary methods of diplomacy reacts injuriously upon the United States Government itself, and in a measure paralyzes the action of the Executive in the direction of a sound and consistent policy.¹³

It is evident, however, that the Hukuang Railway Loan and the Currency Reform Loan to China were not regarded as ordinary contracts between private American citizens and a foreign government. President Taft regarded the group of American bankers as "the indispensable instrumentality" for carrying out a broad policy of great national interest,¹⁴

¹¹ Moore, *International Law Digest*, Vol. VI, p. 705.

¹² Moore, *International Law Digest*, Vol. VI, p. 709.

¹³ Moore, *International Law Digest*, Vol. VI, p. 289.

¹⁴ Annual message, Dec. 7, 1909, *Congressional Record*, Vol. 45, Part I, p. 28.

and throughout his official utterances on the subject he stressed the political importance of these loans in China. This phase of the transactions was also duly appreciated by America's European partners and unfortunately the political aspects became the chief object of the negotiations between the interested governments. After an unedifying exchange of diplomatic correspondence, the Hukuang railway was divided into sections between officials and markets of the nationalities of the respective lenders for construction purposes and the furnishing of materials. The Currency Reform Loan negotiations developed into a sharp diplomatic struggle over the appointment by the lending powers on the basis of nationality of inspectors in the salt gabelle, advisers in the Bureau of Audits and a Director of Foreign Loans, after they had vetoed the Chinese appointment of "neutral" officials to these positions on the basis of ability irrespective of nationality. Telegraphing on this subject to the Department of State on February 21, 1913, Minister Calhoun said: "To my mind it is no longer a question of friendly international cooperation to help China but a combination of big powers with common interests to accomplish their own selfish political aims." Secretary of State Knox replied on February 27, 1913, deprecating the introduction of political issues into the loan negotiations. "Experience has shown," he said, "the wisdom of surrounding such loans to China with adequate safeguards of supervision, not only as a reasonable measure of protection for the interests of the lenders and of the ultimate bondholders but also as a necessary means of upholding China's credit and avoiding the possible consequences of default in her financial obligations, which are already pressing. The Department has, however, consistently held that the Chinese Government must be left free to accept or decline a loan on the conditions proposed, and the American group of bankers interested in the loan negotiations have likewise held the same views."¹⁵

Such was the status of the negotiations when President Wilson assumed office on March 4, 1913. Under the working of the American political system, all national policies, including foreign policy, are dependent upon the views of the administration for the time being in power, and the American group very naturally desired to know whether the new administration would continue to regard them as an indispensable instrumentality of governmental policy in the Far East or whether they would be relegated to the non-preferred position of ordinary private citizens holding a contract with a foreign government. The fact that their contract had been negotiated at the suggestion of the government and through its diplomatic support could not raise it to the solemnity and legal effect of a treaty binding upon the government regardless of the administration in power, as in the case of the loan to Santo Domingo under the Receivership Convention with the United States Government.

¹⁵ *Foreign Relations*, 1913, pp. 164, 166.

Therefore, on the day following the inauguration of President Wilson, the American group addressed a letter to the Secretary of State, referring to the Chinese loan negotiations "upon which this group entered originally at the request of the Department of State, and in which we have continued with its approval and under its direction," and respectfully requested that the Department let the group know its wishes as to the future conduct of the negotiations. On March 18, 1913, President Wilson issued to the press "a declaration of the policy of the United States with regard to China," in which, after reciting that the American bankers "declared that they would continue to seek their share of the loan under the proposed agreements only if expressly requested to do so by the government," he stated that "the administration has declined to make such request, because it did not approve the conditions of the loan or the implications of responsibility on its own part which it was plainly told would be involved in the request." President Wilson's statement continued:

The conditions of the loan seem to us to touch very nearly the administrative independence of China itself; and this administration does not feel that it ought, even by implication, to be a party to those conditions. The responsibility on its part which would be implied in requesting the bankers to undertake the loan might conceivably go to the length in some unhappy contingency of forcible interference in the financial, and even the political, affairs of that great oriental state, just now awakening to a consciousness of its power and of its obligations to its people. The conditions include not only the pledging of particular taxes, some of them antiquated and burdensome, to secure the loan, but also the administration of those taxes by foreign agents. The responsibility on the part of our government implied in the encouragement of a loan thus secured and administered is plain enough and is obnoxious to the principles upon which the government of our people rests.

President Wilson's statement was immediately communicated to the interested governments and the American group promptly announced its withdrawal from the loan.¹⁶ Thus through the action of President Taft's administration in urging China to admit the European bankers to the Currency Reform Loan which China had sought to place solely in the United States, and of President Wilson, in withdrawing American support after the loan had been negotiated with the Sextuple Consortium, China was thrown upon the very lenders whom she had sought to avoid and was being pressed with conditions of a foreign loan which the *Peking Daily News* of March 25, 1913 stated China would never accept unless under compulsion.¹⁷ A few days after the publication of President Wilson's statement, namely, March 25, 1913, the Chinese Minister called at the State Department and

¹⁶ The complete statement of President Wilson, together with the statement of the bankers announcing their withdrawal from the loan, is printed in an editorial in this JOURNAL, Vol. 7, 1913, pp. 335-341.

¹⁷ Foreign Relations, 1913, p. 175n.

informed the Acting Secretary of State that he "had received special instructions from President Yuan Shih Kai to make formal expression of the thanks of the people of China and of their appreciation of the just and magnanimous attitude of President Wilson indicated in the public statement recently issued by him which was accepted by the Chinese Government as an expression of sincere friendship toward the Republic and people of China."¹⁸

A few months later Mr. E. T. Williams, the American Chargé d'Affaires at Peking, in a despatch dated July 11, 1913, requested instructions as to the attitude to be taken by the Legation towards financial transactions between American capitalists and the Chinese Government. He stated that he had several times recently been approached by prominent Chinese officials and others with inquiries for American financiers who might be willing to make loans to the Chinese Government for industrial or administrative purposes, and that in discussing these problems with American business men he had been asked whether the American Government would give its support to these enterprises. Mr. Williams explained that many industrial enterprises in China are either wholly or partially owned by the government and that nearly all railway construction is carried out under contracts with the government. Participation in such enterprises, Mr. Williams said, concerns also the future of American trade "because concessions obtained now will secure for the nations obtaining them the Chinese market for the machinery and other supplies needed in the development of the concessions. Once supplies of a certain type are introduced they tend to become standard and the sale of other sorts becomes very difficult." The central and provincial governments are often in need of money for administrative purposes which can only be obtained by loans secured upon the national or local taxes. "It is evident," Mr. Williams stated, "that financial transactions between American citizens and the Chinese Government are altogether different from such transactions between individuals or business firms. When difficulties occur in connection with the latter, suits may be brought by American plaintiffs in Chinese courts in which our consular representatives have a right to sit as associates to see that justice is done and the treaty rights of their nationals protected; and in cases where Americans are defendants the American consular courts or the United States Court for China have jurisdiction. Should the Chinese Government, however, default in its engagements with

¹⁸For this and other documents relating to the withdrawal of the American group from the loan, see *Foreign Relations*, 1913, pp. 167 *et seq.* For an official Chinese criticism of the terms of this loan, see translation of the letter of the Chinese Minister of Finance to the Sextuple Group, dated March 11, 1913, p. 169; see especially also the despatch of Mr. Williams, American Chargé at Peking, Oct. 21, 1913, regarding the reluctance of China to place a further loan with the quintuple group and her desire to place such a loan with American capitalists, p. 189.

American financiers, it might become necessary to take possession of the revenues pledged as security for the loans made and this, as the President points out, might require 'forceful interference in the financial and even the political affairs of China.'"¹⁹

In response to Mr. William's request for instructions, Secretary of State Bryan replied on September 11, 1913, that the Department "is extremely interested in promoting, in every proper way, the legitimate enterprises of American citizens in China and in developing to the fullest extent the commercial relations between the two countries." "This Government," he said, "expects that American enterprise should have opportunity everywhere abroad to compete for contractual favors on the same footing as any foreign competitors;" but, he added, "this Government is not the endorser of the American competitor, and is not an accountable party to the undertaking. . . . If wrong be done toward an American citizen in his business relations with a foreign government, this government stands ready to use all proper effort toward securing just treatment for its citizens. This rule applies as well to financial contracts as to industrial engagements." The Secretary reaffirmed the Department's instructions of October 21, 1905, above referred to, and referred the legation to Mr. Olney's instructions of December 19, 1896, above quoted, as a clear statement of the general principle which the Department considered still generally applicable.

Although the President of China thanked President Wilson for withdrawing his support from the Six-Power Loan, this was not an indication that the Chinese Government did not desire the investment of American capital. "The withdrawal of the United States left China without a disinterested friend to help her in her dealings with other powers," says M. Joshua Bau, a recent Chinese writer. "With the absence of the United States there was no moral leader among the Powers who could uphold the doctrine of equal opportunity of trade and the integrity of China. As a result, the other Powers fell into their old practice of international struggle for concessions."²⁰

On October 21, 1913, the American Chargé reported that he had been approached by the Premier and three other cabinet ministers on the sub-

¹⁹ Foreign Relations, 1913, p. 183.

There is another element in the foreign loan situation in China which, though disagreeable to mention, has to be taken into consideration. In a despatch of Sept. 25, 1913, the American Chargé at Peking referred to the extravagance and corruption of the government. "The opinion generally expressed by foreigners in Peking," he said, "is that there is far more corruption under the Republic than under the Manchu régime. There are many more officials to be satisfied now, and the commissions upon contracts that are approved are necessarily much larger. In one instance it is credibly stated to have been thirty-five per cent." (Foreign Relations, 1913, p. 188.)

²⁰ The Foreign Relations of China, by M. Joshua Bau, pp. 67 and 171. (Revell Co., New York.)

ject of a loan by American capitalists to the Chinese Central Government. "The Premier regretted," he said, "that the American bankers had withdrawn from participation in the currency loan, that the currency of the country was in a very bad condition, and that its reform was urgently needed. He said the Chinese Government would be glad if the American Government would give such assurances to American capitalists as would induce them to resume the lending of money to China." The American Chargé expressed the opinion that "undoubtedly, the Chinese would like competition between American financiers and those of the quintuple group, since the latter might in such case be induced to moderate their demands."²¹

No official notice, however, appears to have been given to these appeals, and in 1916, when a Chicago banking house advanced to China \$5,000,000 for administrative purposes and sent a copy of the contract to the State Department for a statement of its policy respecting such loans, Mr. Lansing simply replied "that the Department of State is always gratified to see the Republic of China receive financial assistance from the citizens of the United States, and that it is the policy of the Department, now as in the past, to give all proper diplomatic support and protection to the legitimate enterprises abroad of American citizens."²²

The entry of the United States into the war, however, produced a radical change in the attitude of the State Department upon the subject. Feeling that proper means should be placed at the disposal of China to equip herself so as to be of more assistance in the war, says a statement issued by the Department on July 30, 1918, "a number of American bankers, who had been interested in the past in making loans to China and who had had experience in the Orient, were called to Washington and asked to become interested in the matter. The bankers responded very promptly and an agreement has been reached between them and the Department of State which has the following salient features:

"First, the formation of a group of American bankers to make a loan or loans and to consist of representatives from different parts of the country.

"Second, an assurance on the part of the bankers that they will co-operate with the Government and follow the policies outlined by the Department of State.

"Third, submission of the names of the banks who will compose the group for approval by the Department of State.

"Fourth, submission of the terms and conditions of any loan or loans for approval by the Department of State.

"Fifth, assurances that, if the terms and conditions of the loan are accepted by this Government and by the Government to which the loan is made, in order to encourage and facilitate the free intercourse between

²¹ *Foreign Relations*, 1913, p. 191.

²² *New York Times*, Nov. 17, 1916.

American citizens and foreign States which is mutually advantageous, the Government will be willing to aid in every way possible and to make prompt and vigorous representations and to take every possible step to insure the execution of equitable contracts made in good faith by its citizens in foreign lands."

The Department stated that negotiations were in progress with the governments of Great Britain, Japan and France to secure their co-operation and the participation by bankers of their countries in equal parts in any loan which may be made.²³

In the correspondence, which has now been published, leading up to the agreement between the State Department and the bankers,²⁴ it appears that the latter informed Secretary Lansing that it would be necessary "if now and after the war we are successfully to carry out the responsibilities imposed upon us by our new international position, that our Government should be prepared in principle to recognize the change in our international relations, both diplomatic and commercial, brought about by the war," and they expressed the conviction that no Chinese loan could be placed in this country "unless the Government would be willing at the time of issue to make it clear to the public that the loan is made at the suggestion of the Government." Mr. Lansing replied, on July 9, 1918, that "with the consequent expansion of our interests abroad there must be considered also the element of risk which sometimes enters into the making of loans to foreign governments and which is always inseparable from investments in foreign countries where reliance must be placed on the borrowers' good faith and ability to carry out the terms of the contract. This Government realizes fully that condition." In the same letter, however, Mr. Lansing said that "this Government would be opposed to any terms or conditions of a loan which sought to impair the political control of China or lessened the sovereign rights of that Republic." Later, in response to a specific request of the British Foreign Office as to the meaning of this statement, Mr. Lansing explained, in a memorandum of October 8, 1918, that it "had reference only to the future activities of the American group" and "that the United States Government did not mean to imply that foreign control of the collection of revenues or other specific security by mutual consent would necessarily be objectionable, nor would the appointment under the terms of some specific loan of a foreign adviser."

²³ *New York Times*, July 30, 1918, p. 13.

²⁴ The documents were made public by the State Department on March 30, last, but their bulkiness forbade their textual reprinting. They have now been issued by the Carnegie Endowment for International Peace in a pamphlet of 78 printed pages, in an information series published upon questions relating to the Conference on the Limitation of Armament and Problems of the Pacific. Pamphlet No. 40, Division of International Law.

The proposals of Secretary Lansing for the formation of the consortium met with the approval of the British, French and Japanese Governments, and the negotiation by the international bankers of the terms of the consortium took place at Paris coincident with the meeting of the Peace Conference. A draft agreement was drawn up on May 12, 1919 and submitted for the approval of the respective governments. Two obstacles arose, however, which prevented the prompt approval of the draft bankers' agreement.

The first obstacle related to the measure of diplomatic support to be accorded to the banking groups by their respective governments. The draft agreement recited that the groups "are entitled to the exclusive diplomatic support of their respective governments." In Mr. Lansing's memorandum of October 8, 1918, outlining his plan to the other governments, he stated that it was intended to include in the membership of the national groups all financial firms of good standing interested in administrative and industrial loans to China and that the interested governments should withhold their support from independent financial operations without previous governmental agreement. Mr. Lansing stated that thirty-one banks representative of all sections of the country had joined the American group. The British Foreign Office, in its note of March 17, 1919, accepted this proposal and offered exclusive support to the British group on condition that it was enlarged in such a manner as to render it sufficiently representative of the financial houses of good standing interested in Chinese loans to prevent criticism on the ground of exclusiveness.

On June 7, 1919, however, the British Government informed the State Department that it could not extend its exclusive support to the British group "as the latter have hitherto failed to comply with the conditions on which alone His Majesty's Government are prepared to guarantee exclusive official support."²⁵

The French Government also expressed its inability to extend exclusive support to the French Group. Its reasons may best be expressed by quoting from the note of the French Foreign Office to the American Ambassador at Paris, dated June 20, 1919, as follows:

You are no doubt aware that both in France and England the groups whilst admitting new members have for various reasons excluded firms with important interests in China. New enterprises may, moreover, at

²⁵In a letter of June 4, 1919, the Hongkong and Shanghai Banking Corporation, when informing the Foreign Office that they considered the British group as at present constituted fully representative of British finance, stated that "they are well content with the general measure of government support which they at present enjoy and have no desire to change it for any other. Their sole object in assenting to the conditions attached to exclusive support was to further the policy of His Majesty's Government with regard to the American consortium proposal, of which exclusive support was a postulate." For the full correspondence between the British group and the Foreign Office, see Miscellaneous, No. 9, pp. 12-36.

any time spring up desirous of carrying on business in China, but not disposed to enter the consortium just as the consortium may possibly not be disposed to admit them. Now, there is nothing in French law which permits the limitation of the individual activity of private persons nor that of financial and industrial companies, nothing which permits the restriction of their activities in China or in any other part of the world. It follows that the consortium, not having united and being indeed practically speaking unable to unite all the French interests which operate or which may some day desire to operate in the territory of the Chinese Republic, could not claim the exclusive support of the French Government. The principles of our public law as well as parliamentary opinion would not allow us to grant it a sort of monopoly. Besides, you are aware that at the time of the formation of the old consortium it was not accorded any privilege in law or in fact, and its founders simply relied on the financial strength of the organization, the resources of the participating concerns and the co-ordination of their efforts to obtain for themselves the preponderating position in the Chinese market, which they have not ceased to enjoy. It is on these intrinsic elements of success, rather than on legal privileges, that the new consortium should base its prospects.²⁸

The American State Department seems to have held itself competent and to have been willing to guarantee exclusive support to the American group, but in order to obtain the approval of France and Great Britain it proposed and they accepted the following formula in lieu of the provision objected to:

The Governments of each of the four participating groups undertake to give their complete support to their respective national groups members of the Consortium in all operations undertaken pursuant to the resolutions and agreements of the 11th and 12th of May, 1919, respectively, entered into by the Bankers at Paris. In the event of competition in the obtaining of any specific loan contract the collective support of the diplomatic representatives in Peking of the four Governments will be assured to the Consortium for the purpose of obtaining such contract.

A more serious obstacle to the approval of the draft agreement arose from the attempt of Japan to exclude certain parts of Manchuria and Mongolia from the operation of the consortium. Such exclusion was proposed at Paris on June 18, 1919 by the representative of the Japanese group and was confirmed by the Japanese Embassy at Washington on August 27, 1919, which offered to accept the draft agreement of May 12, 1919 with the following proviso: "Provided, however, that the acceptance and confirmation of the said resolution shall not be held or construed to operate to the prejudice of the special rights and interests possessed by Japan in South Manchuria and Eastern Inner Mongolia."

The attempt to exclude these regions was immediately protested by the American State Department and the British Foreign Office. Secretary Lansing, in a memorandum of October 28, 1919, stated that the

²⁸ Miscellaneous No. 9, 1921, pp. 27-28.

American Government "can only regard the reservation in the form proposed as an intermixture of exclusive political pretensions in a project which all the other interested Governments and groups have treated in a liberal and self-denying spirit and with the purpose of eliminating so far as possible such disturbing and complicating political motives; and it considers that from the viewpoint either of the legitimate national feeling of China or of the interests of the Powers in China it would be a calamity if the adoption of the Consortium were to carry with it the recognition of a doctrine of spheres of interest more advanced and far-reaching than was ever applied to Chinese territory even when the break-up of the Empire appeared imminent." Mr. Lansing pointed out that the inter-group agreement of May 12 specified that only those industrial undertakings are to be pooled upon which substantial progress has not been made and that "if Japan's reservation is urged with a view solely to the protection of existing rights and interests, it would seem that all legitimate interests would be conserved if only it were made indisputably clear that there is no intention on the part of the Consortium to encroach on established industrial enterprises."

The Japanese Government replied on March 2, 1920 denying that its proposal was prompted by a "desire of making any territorial demarcation involving the idea of economic monopoly or of asserting any exclusive political pretensions or of affirming a doctrine of any far-reaching sphere of interest in disregard of the legitimate national aspirations of China, as well as of the interests possessed there by the Powers concerned," but asserting that "the regions of South Manchuria and Eastern Inner Mongolia which are contiguous to Korea stand in very close and special relation to Japan's national defense and her economic existence," that "enterprises launched forth in these regions often involve questions vital to the safety of the country," and that these circumstances "compelled the Japanese Government to make a special and legitimate reservation indispensable to the existence of the State and its people." The Japanese memorandum then proposed a new formula of acceptance of the consortium which stated that "in matters relating to loans affecting South Manchuria and Eastern Inner Mongolia which in their opinion are calculated to create a serious impediment to the security of the economic life and national defense of Japan, the Japanese Government reserve the right to take the necessary steps to guarantee such security," and appended a list of Japanese undertakings and options to be excluded from the activities of the Consortium. An identical memorandum was presented to the British Foreign Office on March 16, 1920. Since the replies to these memoranda have been accepted by Japan as an integral part of its acceptance of the consortium, the relevant portions of the American reply on March 16, 1920 is quoted textually. After stating that the right of national self-preserva-

tion is one of universal acceptance which does not require specific formulation and "that the recognition of that principle is implicit in the terms of the notes exchanged between Secretary Lansing and Viscount Ishii on November 2, 1917," the American memorandum states:

This Government therefore considers that by reason of the particular relationships of understanding thus existing between the United States and Japan, and those which, it is understood, similarly exist between Japan and the other Powers proposed to be associated with it in the Consortium, there would appear to be no occasion to apprehend on the part of the Consortium any activities directed against the economic life or national defense of Japan. It is therefore felt that Japan could with entire assurance rely upon the good faith of the United States and of the other two Powers associated in the Consortium to refuse their countenance to any operation inimical to the vital interests of Japan.

Similar assurances were given by Great Britain on March 19, 1920, and by France on May 25, 1920.

With reference to the specific undertakings in Manchuria and Mongolia which Japan proposed to exclude from the operations of the consortium, both the United States and Great Britain filed objections and proposed that this question be settled in negotiations between representatives of the American and Japanese banking groups.

In memoranda dated April 3 and May 8, 1920, to the Department of State, and April 14 and May 10, 1920, to the British Foreign Office, Japan, after stating that she put forward her proposal "in order to make clear the particular position which Japan occupies through the facts of territorial propinquity and of her special vested rights," accepted the foregoing assurances in lieu of her formula, and authorized the Japanese banking group to enter the consortium on the same terms as the other groups and to settle with those groups the concrete questions as to which of the options Japan possesses in Manchuria and Mongolia were to be excluded from the consortium. The negotiations between the two groups were concluded at Tokio on May 11, 1920 and resulted in the following agreement:

1. That the South Manchurian Railway and its present branches, together with the mines which are subsidiary to the railway, do not come within the scope of the Consortium;
2. That the projected Taonanfu-Jehol Railway and the projected railway connecting a point on the Taonanfu-Jehol Railway with a seaport are to be included within the terms of the Consortium Agreement;
3. That the Kirin-Huining, the Chengchiatun-Taonanfu, the Changchun-Taonanfu, the Kaiyuan-Kirin (via Hailung), the Kirin-Changchun, the Sinminfu-Moukden and the Ssupingkai-Chengchiatun Railways are outside the scope of the joint activities of the Consortium.

So far as the published correspondence discloses, the first communication to the Chinese Government regarding the consortium was made on September 28, 1920, in a joint note of the American, British, French

and Japanese Legations at Peking, setting forth its scope and object. China was told that "in the course of 1918 the United States Government informed the other three governments in question of the formation in the United States of America of an American group of bankers for the purpose of rendering financial assistance to China;" that "the principles underlying the formation of the American group were that all preferences and options for loans to China held by any members of this group should be shared by the American group as a whole and that future loans to China having a governmental guarantee should be conducted in common as group business, whether these loans were for administrative or for industrial purposes;" and that the financial groups of the four Powers had agreed upon a draft arrangement embodying *inter alia* the principles of the American proposals, which arrangement "relates to existing and future loan agreements involving the issue for subscription by the public of loans having a Chinese Government guarantee subject to the proviso that existing agreements for industrial undertakings upon which substantial progress has been made may be omitted from the scope of the arrangement." The measure of support to be given by the respective Governments to their national groups or to the consortium as a whole was stated in substantially the same language as that hereinbefore given, and China was informed that while the new arrangement was not intended to interfere with any of the rights of the old consortium, the proposals envisaged a reconstruction and enlargement of it "so as to meet the larger needs and opportunities of China in a spirit of harmony and of helpfulness rather than of harmful competition and self-interest."

The final text of the consortium agreement was signed at New York on October 15, 1920 and transmitted to the Chinese Government on January 13, 1921. A Belgian banking group was admitted to membership after signature of the agreement. The text of the agreement is printed in the Supplement.²⁷

The new consortium differs from the old in one important particular, namely, in that it does not relate to a specific loan but applies with certain exceptions to public loans held or to be obtained by the members. In all operations undertaken pursuant to the consortium the respective governments pledge their "complete support." The meaning of the term quoted is not defined. It is evidently more than the "good offices" which every government is ordinarily prepared to extend to any of its citizens in contract claims.²⁸ The expression doubtless must mean that the gov-

²⁷ P. 4.

²⁸ "Good offices" consist merely in a direction to the diplomatic agent "to investigate the subject, and if you shall find the facts to be as represented, you will secure an interview with the Minister for Foreign Affairs and request such explanations as it may be in his power to afford." (Moore, *International Law Digest*, Vol. VI, p. 710.)

ernments will be prepared to make official diplomatic representations. In this respect the promise of the American State Department goes beyond the traditional practice of the Department prior to Mr. Taft's administration. It will be noted that the support pledged is not limited to *diplomatic* support. It may mean, therefore, complete support of any kind necessary to protect the operations of the consortium. Such an interpretation would, of course, include military support. That an American Secretary of State is competent to commit the Government to such an undertaking in behalf of private contracts has been denied by Secretaries Marcy and Day, as above set forth.

There apparently is no intention of official participation in the securing of loans for the consortium; but in the event of competition the governments will lend the support of their diplomatic representatives. To this extent, the action of the State Department under the new consortium will be comparable to the diplomatic support exerted by Mr. Taft's administration to secure American participation in the Hukuang Railway Loan.

To the appointment of foreign officials in China for purposes of supervision, which became such an objectionable feature under the old consortium as to lead to American withdrawal, the concurrence of the State Department has been given in advance in the correspondence and diplomatic notes of Mr. Lansing leading up to the formation of the new consortium. A measure of control to prevent the abuse of this dangerous expedient is retained by the requirement in the agreement with the bankers that they will follow the policies outlined by the Department of State and submit the terms and conditions of each loan for the approval of the Department. It will be recalled that the negotiations of the American group in the old consortium were carried on with the approval and under the direction of the Department of State, but the department, representing only one of a partnership of six, found itself entangled in embarrassing political negotiations from which it was only extricated by an inglorious withdrawal from the whole transaction.

A few months after the new consortium was formed another change of administration took place in Washington, and on March 10, 1921, the representatives of the American group addressed a letter to the new Secretary of State, inquiring if the policy of the Department in encouraging American interests in the assistance of China through the operations of the international consortium was in accord with his views and received his approval. The letter stated that the operations of the consortium are in no way designed to interfere with the private initiative of Americans or other nationals in China, that it does not propose to undertake any mercantile, industrial or banking projects, but plans only to help China in the establishment of her great public utilities, such as the build-

ing of her railways, canals, etc., thereby assisting in stabilizing China economically and financially, and making that field a safer one for the initiative of our citizens in private enterprises in commerce, industry, etc.

In reply, Secretary Hughes, on March 23, 1921, informed the American group "that the principle of this cooperative effort for the assistance of China has the approval of this Government, which is hopeful that the Consortium constituted for this purpose will be effective in assisting the Chinese people in their efforts towards a greater unity and stability, and in affording to individual enterprises of all nationalities equality of commercial and industrial opportunity and a wider field of activity in the economic development of China."

THE PROTECTION OF AMERICAN CITIZENS IN CHINA: EXTRATERRITORIALITY

BY BENJ. H. WILLIAMS

THE ORIGIN OF EXTRATERRITORIALITY IN CHINA

The most important single step taken by the western powers in protecting their nationals in China was the acquisition of extraterritoriality. This withdrew them from the jurisdiction of Chinese law and placed them under the laws and tribunals of the home country. As there is at the present time a great deal of discussion as to whether these rights should be withdrawn it may be worth while to glance for a moment at the reasons for the origin of the system, and this may in turn enable us to judge better whether the conditions which gave rise to it have as yet passed away.

Prior to the intercourse of western nations with China the system of extraterritoriality had existed in certain other oriental countries, dating back to the exemptions allowed under the Greek Emperors at Constantinople.¹ But when the western nations came in contact with China they found there no willingness to allow immunities from the Chinese law. China had gone through a period of legal evolution similar in this respect to that of the European nations but earlier in date. The Chinese law, like that of the West, had become territorial, and all within the Emperor's domain were subject to his jurisdiction. The Chinese Penal Code provided: "In general, all foreigners who come to submit themselves to the government of the Empire, shall, when guilty of offenses, be tried and sentenced according to the established laws."²

It is true that in the case of the Russian relations along the northern border it was provided by treaty as early as 1689 that where the subjects of one country should commit offenses in the other they should be taken across the border for punishment. At Canton, however, where the greater part of the trade with the West was carried on, the strict territoriality of the law prevailed. During the early period the Chinese took jurisdiction

¹See Frank E. Hinckley, *American Consular Jurisdiction in the Orient*, Washington, D. C., 1906; Philip Marshall Brown, *Foreigners in Turkey*, Princeton, N. J., 1914.

²Sir George Thomas Staunton, *Penal Code of China* (a translation), London, 1810, Sec. XXXIV, p. 36.

over all criminal cases, including those where Europeans were concerned.³

The Terranova case illustrates the methods used by the Chinese in compelling the surrender of an accused foreigner. During September, 1821, while the American ship *Emily* was at Canton, a member of the crew, Francis Terranova, an Italian by birth, was accused of causing the death of a Chinese woman. She was selling fruit in a small boat alongside the *Emily*; and the sailor, whether by accident or design, dropped an earthen jar overboard, striking her upon the head and causing her to fall into the water and drown. The Chinese authorities immediately demanded that Terranova be surrendered to them. The captain of the *Emily* refused to deliver him, but instead placed him in confinement on the boat. After negotiations it was agreed that he should have a fair and impartial trial by a Chinese magistrate on board of the *Emily*. The trial was accordingly held, but compared with American standards of justice it was exceedingly unfair to the accused. The defendant was adjudged guilty and request was made that he be sent ashore for execution. During the negotiations which followed this demand the Americans are reported to have said: "We are bound to submit to your laws while we are in your waters, be they ever so unjust. We will not resist them."⁴

The Americans refused to surrender the prisoner, stating however that they would make no resistance should the Chinese come aboard and take him. Upon receiving this answer the local authorities arrested the security merchant and linguist of the *Emily* and placed them in close confinement in Canton. The American trade was ordered to be stopped, and the merchants were forbidden to supply the ship with provisions. After a week, during which time the American traders experienced great inconvenience, Terranova was surrendered. A second trial was held at Canton at which no foreigners were allowed to be present. The accused was found guilty and strangled to death within twenty-four hours at the public execution grounds in Canton. His body was then returned to the *Emily*. From this it may be seen that the Chinese claimed jurisdiction over foreigners within their territory and used vigorous methods to enforce their claims.

OBJECTIONS OF FOREIGNERS TO THE CHINESE JURISDICTION

Submission to Chinese jurisdiction was, however, revolting to foreigners on account of certain obnoxious features of the Chinese law and procedure, which may be described as follows:

³Staunton, *supra.*, p. 517, setting forth an edict demanding the surrender of an accused European at Macao. See also Peter Auber, *China, an Outline*, London, 1834, p. 85; Hosea Ballou Morse, *The International Relations of the Chinese Empire*, London, 1910, Vol. 1, p. 100.

⁴North American Review, Vol. 40, p. 66, giving the account of an eye-witness to the trial.

Severity and Cruelty of Punishments

According to the Penal Code there were several gradations of punishments varying with the seriousness of the crime. These, in brief, consisted of death by slicing, decapitation and strangulation; transportation for life or a term of years, often combined with penal servitude; whipping with the bamboo; and wearing the cangue, or a square wooden frame around the neck. This was a system of severe penalties and humiliations without any idea of reformation except through fear and force. There is evidence that the actual administration of the law was by no means as severe as the written code would indicate. There were a number of reasons for mitigation of punishment and for exceptions in particular cases, so that the nominal and outward form of the law lost much of its severity in the actual application. It is doubtful if, on the whole, the Chinese penalties were any more severe than those in force in England at the beginning of the nineteenth century. Yet nevertheless the impression among foreigners was that the Chinese law was full of cruel and unusual punishments, and this had much to do with creating a demand for extraterritoriality.

Bad Conditions in Chinese Prisons

The prisons were not used for confinement as punishment after crime, but rather for the detention of the accused and oftentimes of the accuser and witnesses while awaiting the trial. They were ordinarily in a filthy and unhealthful condition. The prisoners were huddled together in single enclosures. Overcrowding was common. Cases of skin infection were frequent; and conditions in general were favorable to the propagation of disease. Samuel Wells Williams estimated that the number of those who died in prison was twice as great as the number of those dispatched by the executioner. He mentions that 200 deaths were reported for the Cantonese prisons in 1826 and 117 in 1831.⁵

Administration of Justice by Executive Officers

Until recently there has been no separate judiciary in China. The judicial system has been in the hands of the administrative officials. The District Magistrate, who presided over the court of first instance, was also Sheriff, Tax Collector, Overseer of the Public Roads, Registrar of Lands, Famine Commissioner, Officer of Education, Coroner and Prosecuting Attorney.⁶ The administrator must be a man of energy and vigorous action in upholding the majesty of the law. The rights of the state in the punishment of crime must loom larger in his mind than the rights of the

⁵S. Wells Williams, *The Middle Kingdom*, New York, 1883, Vol. I, p. 514.

⁶See T. B. Jernigan, *China in Law and Commerce*, New York, 1905, p. 35; J. Thomson, *The Land and the People of China*, London, 1876, p. 248.

individual. Accordingly it would be useless to expect a judicial attitude or a disposition to apply the law in a scientific manner. Furthermore the widely known corruption of the Chinese officials naturally made the westerner averse to submitting himself to their jurisdiction. Proceeds from tax collection, presents, rewards for connivance with criminality, exactions of all kinds went to make up the compensation of the under-paid official; and it was well known that bribery often controlled the decision in a case at law.

Torture and Prejudice against the Accused

Foreigners shrank from submission to trial by Chinese tribunals because of the methods of torture to extort testimony which were common at that time. In cases where the Magistrate believed the witness to be testifying falsely or where he refused to answer a question it was customary to apply the instruments of torture. Torture was also quite universally applied upon the person of the accused. Although presumed to be guilty no penalty could be inflicted without a confession. To obtain this confession the accused was subjected to torture.⁷ The following account of an eye-witness illustrates this procedure. The accused was compelled to kneel upon chains. His hands were fastened behind his back and tied to a stake held by two policemen. He was evidently in agony, and each time he swerved to relieve the pain he was brought back to position with a blow upon the head. His cries for mercy brought forth only the answer: "Suffer or confess."⁸ How repugnant such practices were in the eyes of the foreigners can readily be seen when it is remembered that in England and America not only was the accused protected against torture but he could not even be compelled to testify against himself.

The Doctrine of Responsibility

The Chinese law held the group for the acts of the individual. The family was held for the acts of its members.⁹ This is well illustrated by a case occurring as late as 1900 in which two Chinese, who had become citizens of the United States and were residing in Honolulu, committed a political offense against the Chinese Government. Being unable to reach the offenders in Honolulu the Chinese officials proceeded by fine and imprisonment against the families of the two men in China.¹⁰

The doctrine of responsibility was likewise applied to foreigners as a group. If a Chinese was killed by a foreigner the Chinese officials held the foreigners of that nationality to account, demanding that they should

⁷Thomson, *op. cit.*, p. 248; Alabaster, *Notes and Commentaries on Chinese Criminal Law*, London, 1899, p. 17; Morse, *op. cit.*, Vol. I, p. 112.

⁸W. C. Milne, *Life in China*, quoted in S. W. Williams, *op. cit.*, Vol. I, p. 508.

⁹Auber, *op. cit.*, p. 56; Alabaster, *op. cit.*, p. LXX.

¹⁰U. S. Foreign Relations, 1902, p. 244.

surrender some one for execution, to render a life for a life. This was their attitude in the case of the Lady Hughes¹¹ in 1784, in the Terranova incident of 1821,¹² and in the case of the Topaze of the same year.¹³

Prejudice of the Chinese against Foreigners

The official class of Chinese looked upon the men of other nations as barbarians and, in a measure, without the pale of the law. "The barbarians are like beasts, and not to be ruled on the same principle as citizens. Were anyone to attempt controlling them by the great maxims of reason, it would tend to nothing but confusion. The ancient kings well understood this, and accordingly ruled barbarians by misrule; therefore to rule barbarians by misrule is the true and best way of ruling them."¹⁴ In 1836 a complaint made to the British Foreign Office concerning conditions in China asked, among other things, that British subjects be entitled to the protection of Chinese laws, "such as they are." "Why the foreign residents of China should be regarded as without the pale of all governmental laws," the memorial continued, "it is difficult to understand; but such is the fact; for while the Chinese Government has adopted the principle that it is right to control them without laws, no foreign power affords any protection to the residents here."¹⁵

It was for these reasons that the principal western nations demanded and secured from China the immunities from Chinese law and jurisdiction commonly referred to as extraterritoriality, which constitute an important divergence from the principles practiced by the western nations in their dealings with one another. Great Britain was the first to secure this concession by treaty provision. This was obtained as a result of the war with China of 1839-42. Although the matter was not mentioned in the Treaty of Nanking, which concluded the war, it was nevertheless provided for in the supplementary treaty signed in 1843. The United States following this lead obtained the inclusion of extraterritoriality in the Treaty of 1844.

The provisions as set forth in the Treaty of 1844 between the United States and China, and as later amplified by the Treaty of 1880, constitute a full and explicit statement of the privileges of extraterritoriality, and may be summarized as follows:

1. American citizens who are accused of crime in China are subject to trial and punishment by the authorized American tribunal according to the laws of the United States.

¹¹S. W. Williams, *op. cit.*, Vol. II, p. 451; Auber, *op. cit.*, p. 183; Morse, *op. cit.*, Vol. I, p. 102.

¹²North American Review, Vol. 40, p. 67.

¹³Morse, *op. cit.*, Vol. I, p. 105.

¹⁴Father Premare's translation of the Confucian commentator Su Tung-po, quoted in Morse, *op. cit.*, Vol. I, p. 112, and S. W. Williams, *op. cit.*, Vol. II, p. 450.

¹⁵Chinese Repository, Vol. V, p. 334.

2. Controversies between citizens of the United States and China may be settled by suit brought in the tribunal of the defendant's nationality according to the law of the defendant's nationality. An official of the plaintiff's nationality may be present.

3. Disputes between citizens of the United States in China are subject to the jurisdiction of the United States.

4. Controversies between citizens of the United States and citizens or subjects of any other government shall be regulated by the treaties existing between the United States and such government.

SOME DEFECTS IN EXTRATERRITORIALITY

When China declared war against Germany and Austria the treaty rights of those countries were abrogated and the right of extraterritoriality was taken from them. China has refused to restore those advantages, and in the trade agreement which was signed with Germany on May 20, 1921, it was provided that the life and property of the nationals of either power traveling or residing within the territory of the other shall be under the jurisdiction of the local courts. Furthermore, in September, 1920, China withdrew recognition from the Russian Government. This left the Russians in China without any official representatives; and their cases must now be tried before Chinese officials, acting in place of the Russian consular tribunals. These steps toward the abolition of extraterritoriality have given China the hope that in the near future the entire system may be done away with. Indeed it was with such a hope that the representatives of the Chinese Republic, when presenting their case at the Peace Conference at Paris in 1919, requested, among other things, that extraterritoriality should be abolished.

In connection with this request it is necessary to discuss, first, what are the disadvantages that are claimed against the system; and secondly, whether the laws of China show promise of becoming sufficiently in accord with western standards of justice to be acceptable for the government of foreigners in that country.

Before examining the facts, however, it may be pointed out that there are strong reasons for expecting an indifferent administration of the law under a system of extraterritoriality. A crime is an offense against society which society must punish. An aroused public opinion gives vigor to the enforcement of the law, demands adequate police protection and jail facilities and upholds the hands of the judiciary. With public opinion awakened the machinery of the law will operate smoothly; but when the public slumbers an inevitable inertia results. Under a system of extraterritoriality the injured society is powerless to apply punishment to foreigners who offend against it. Foreign officials must pass judgment upon them. There is no aroused public sentiment urging the foreign government to a vigorous enforcement of its laws. An indifference results, which is only

increased by the element of racial prejudice. From this point of view it appears that extraterritoriality, however necessary it may have been, has a fundamental weakness, and that the true and normal system of criminal punishment is that which has grown up with the system of international law in the West under which the courts of a country have jurisdiction over all crimes committed within the territorial boundaries.

After extraterritoriality had been in operation for fourteen years in China the American Minister, Mr. Reed, roundly condemned the failure to punish adequately Americans who were guilty of crime in that country. He said: "We extort from China 'ex-territoriality,' the amenability of guilty Americans to our law, and then we deny to our judicial officers the means of punishing them. There are consular courts in China to try American thieves and burglars and murderers, but there is not a single jail where the thief or burglar may be confined. Our consuls in this, as in many other particulars, have to appeal to English or French liberality, and it often happens that the penitentiary accommodations of England and France are inadequate to their own necessities, and the American culprit is discharged. . . . I consider the exaction of 'ex-territoriality' from the Chinese, so long as the United States refuse or neglect to provide the means of punishment, an opprobrium of the worst kind. It is as bad as the coolie or the opium trade."¹⁶

This early experience has been corroborated by a number of opinions since that date. In 1864 Minister Burlingame wrote to the State Department in regard to the execution of one Buckley for the murder of a Captain McKennon: "Such men as . . . Buckley had so long escaped punishment that they had come to believe that they could take life with impunity. The United States authority was laughed at and our flag was made the cover for all the villains in China."¹⁷ The next year Samuel Wells Williams, Chargé d'Affaires, wrote: "Cases have already occurred in China of aggravated manslaughter, and even of deliberate killing of the natives by foreigners, whose crimes have been punished by simple fines or mere deportation or short imprisonment; while foreigners strenuously insist on full justice when life is taken by the natives, or maiming with intent to kill."¹⁸

In 1871 Mr. Seward, Consul-General at Shanghai, wrote: "It would be difficult to say that the extraterritorial system is not often productive of injustice to the Chinese. . . . A few years ago the Viceroy at Nanking, in presenting a case on behalf of some poor boat people, whose vessel had been sunk by a foreign steamer, declared that the frequency of such accidents had so aroused the people along the river that he feared they would

¹⁶Sen. Doc. 30, 36th Cong., 1st sess., p. 355.

¹⁷U. S. Foreign Relations, 1864, Part 3, p. 400.

¹⁸*Ibid.*, 1865, Part 2, p. 454.

endeavor to make reprisals should the foreign courts continue to refuse redress."¹⁹

In 1876 Sir Robert Hart, Inspector General of the Imperial Maritime Customs, in speaking of the defects of extraterritoriality, commented as follows: "Chinese . . . complain that foreigners assault Chinese with impunity; that what China calls murder is invariably excused or made manslaughter by foreign courts; that where Chinese law prescribes death the offending foreigner is sentenced to only a short imprisonment; and that, while the foreigner insists that Chinese shall be punished with death where foreign life has been lost, he, on his side, expects China to accept a small sum of money in lieu of a death punishment where Chinese life is lost."²⁰

In 1883 a riot against foreigners occurred in Canton and a large amount of property was destroyed. The feelings of the people had been aroused by the killing of a Chinese by a British subject while the latter was in an intoxicated condition. There was great fear on the part of the Chinese that the culprit would either be released or escape with a trifling punishment. While they were in this state of mind another Chinese was killed by a Portuguese watchman; and then the trouble broke loose.²¹

A case occurring in 1904 will further illustrate the indifference of foreigners to crimes committed against the Chinese. In September of that year in Canton an unoffending Chinese of good standing in the community was seized by a group of drunken sailors and thrown into the water, where he was drowned. All of the witnesses subsequently examined, both foreign and Chinese, testified that the crime had been committed by American sailors. Mr. Conger, the American Minister, Mr. Rockhill, his successor, and the American Consul-General at Canton considered that the identity of the culprits as Americans had been established. But no one was ever brought to justice for the offense. A great deal of intense feeling was aroused in Canton on account of the crime; and the native and foreign press was very caustic in commenting on this apparent breaking down of justice. The native press in particular contrasted the indifference of the American enforcement of the law in this case with the unusual energy displayed in demanding redress for crimes committed against foreigners by Chinese. The American Government finally paid an indemnity of \$1,500 to the family of the murdered man.²² But the feeling was only partially allayed; and in the case of the Lienchou murders a year later, when five Americans were killed, the Canton correspondent of the *North-China*

¹⁹U. S. Foreign Relations, 1871, p. 170.

²⁰Morse, *op. cit.*, Vol. II, p. 457.

²¹U. S. Foreign Relations, 1884, p. 46 *et seq.*

²²U. S. Foreign Relations, 1905, p. 112; *North-China Herald*, Vol. 73, pp. 960, 1015.

Herald attributed the anti-American feeling, which was a partial cause of the crime, to the failure of justice in the case of the murder at Canton.²³

An examination of the adjudicated cases compels the conclusion that oftentimes offenses committed by foreigners against the Chinese have not been rigorously punished. In a British case, reported in 1897, it was alleged that the accused, the quartermaster of an English steamer, had pushed a Chinese coolie from a pontoon alongside the steamer into the river, with the result that he was drowned. Two Chinese witnesses swore positively that they had seen the crime committed, and one Englishman swore that he had seen the Chinese slip and fall into the river. It took the British jury five minutes to reach a verdict of not guilty.²⁴ The *North-China Herald* in commenting upon the case said: "The philanthropist who cannot allow that the value of a man's evidence in a court of law is affected by his colour, his race or his education might be inclined to express some surprise at the issue of the trial."²⁵

The failure to apply the law strictly in cases of crimes against the Chinese is most to be noted in cases coming before the consular courts. Consuls are political officials and more apt than the ordinary judge to be influenced by a regard for their own nationals. A few instances of cases arising in the United States consular courts will serve to illustrate this point.

In one case the accused was found guilty of entering a Chinese tailor shop, knocking down a Chinese boy and attempting to make away with some clothing. When the tailor tried to restrain him the accused fired a revolver at him. The accused was sentenced to pay five dollars to the tailor and was told to leave town. If he returned he would be sentenced heavily.²⁶ Two American sailors, who broke into a Chinese house and assaulted the occupants, were fined fifteen dollars each. The Consul said: "American sailors must plainly understand that when they come ashore in Shanghai they must behave themselves."²⁷ An American serving as constable of the river police at Shanghai, in compelling certain Chinese to move their boat, kicked and struck one of them, causing his death. He was sentenced by the American Consul to eighteen months' imprisonment.²⁸ It is difficult to conceive of a case more pregnant with possibilities of international hatred than this that a police officer of an alien nationality should so brutally mistreat a Chinese subject, and that there should be no recourse but submission to the infliction of a comparatively slight penalty upon the slayer by a foreign tribunal.

²³*North-China Herald*, Vol. 77, p. 373.

²⁴*Regina vs. Ryan*, *North-China Herald*, Vol. 59, p. 280.

²⁵*North-China Herald*, Vol. 59, p. 245.

²⁶*U. S. People vs. Nash*, *North-China Herald*, May 14, 1903, p. 948.

²⁷*U. S. People vs. McCoy and Taylor*, *North-China Herald*, July 14, 1905, p. 100.

²⁸*U. S. People vs. J. G. Munz*, *North-China Herald*, Nov. 4, 1904, p. 1043.

Undoubtedly the creation of the United States Court for China in 1906 had a very beneficial effect upon this situation. The trained judge is ostensibly more apt to make a just and impartial application of the law than a non-judicial officer. Shortly after this court was established a great deal of favorable comment was excited by the prosecutions which were instituted in it and which resulted in cleaning out certain disreputables from among the American element at Shanghai. There is no doubt that so far as the cases which come within the jurisdiction of the United States Court are concerned there has been little cause for complaint. Nevertheless shortly after the opening of this court a case arose which brought forth a protest on the part of the Chinese.

The facts were: In May of 1907 Henry N. Demenil, an American citizen, was traveling in the Province of Yunnan along the Tibetan frontier, contrary to the terms of his passport. The Viceroy of Szechwan had sent with him two Chinese soldiers to act as an escort for his protection. Becoming angry with one of the soldiers for his delay while at a small village, the American obtained possession of the rifle of the soldier and sought to frighten him by firing in his direction. The second shot struck a Tibetan lama, who was travelling along the road a short distance away, and killed him instantly. The prisoner was acquitted on the grounds that there was not the least criminal intent in his act.²⁹

The Prince of Ch'ing of the Chinese Foreign Office wrote the United States Minister, Mr. Rockhill, as follows: "The decision of the judge that the affair was accidental and that no punishment should be inflicted, nor even a fine assessed for the lama's death, how can this satisfy the minds of men or display justice? . . . After thus taking human life he is not convicted of any crime, and is not even fined. The great wrong done the murdered man is not in the least atoned for. When the people of Szechwan and Yunnan hear of this the hair will rise on their heads. . . . In this case justice does not shine and the good name of America suffers."³⁰

It was explained to him in reply that a fair trial had been accorded the accused, and that according to the Constitution of the United States he could not be retried. Furthermore, the American Government was unable to furnish compensation to the relatives of the deceased, as had been requested; but it was suggested that a civil suit for damages for the death of the lama could be brought against Demenil if he could be found within the jurisdiction of a competent court.³¹

In commenting on the general situation, W. W. Willoughby, an eminent political scientist with experience in China, remarks: "One cannot shut his eyes to the fact that there is usually a strong bias in favor of his own nationals upon the part of the Consul or other foreign official who

²⁹U. S. *vs.* Henry N. Demenil, *North-China Herald*, Dec. 6, 1907, p. 606.

³⁰U. S. Foreign Relations, 1909, p. 56.

³¹*Ibid.*, p. 62.

tries the case in which the Chinese are plaintiffs or petitioners.”³² And with particular reference to the consular courts, A. M. Latter, barrister-at-law at Shanghai, has the following to say: “The first duty of a Consul is to protect the interests of his sovereign’s subjects; it is scarcely consistent to add to that duty the task of administering justice when a complaint is brought against that subject; and the duties of protection of a class and the administration of impartial justice between that class and others cannot but clash. Only too often is the verdict of the extraterritorial court a formula as of course ‘judgment for the defendant,’ and the defendant has then every reason to be satisfied that he has an efficient consular service.”³³

It is impossible for the powers to maintain a sufficient number of judicial tribunals in China to handle adequately the disputes that may arise throughout that country. In the early days Minister Reed wrote: “The foreigner who commits a rape or murder a thousand miles from the seaboard is to be gently restrained, and remitted to a Consul for trial, necessarily at a remote point, where testimony could hardly be obtained or ruled on.”³⁴ There are today not less than 107 cities and towns in China that are open to foreign trade and residence. The consular tribunals are necessarily limited to a very few of these places, the United States having consular representatives at fifteen. Some of the other nations have less than this, Italy, for example, having but five.³⁵

Today China is bending every effort to secure her international position on the basis of equality with other nations. Extraterritoriality is a distinct impairment of sovereignty. It is a badge of subordination that can exist today only against the will of the nation within whose territory it is maintained; and it can be maintained there only on account of superior force. It thus stands directly in the way of China’s growing ambitions.

There are also certain evident disadvantages to foreigners in the system of extraterritoriality. In the first place, as long as this system remains in force China must continue, to a great extent, closed to foreign residence. At present there are certain open ports at which foreigners may reside and trade. Outside of these ports, with the exception of missionaries, who have a greater latitude, foreigners cannot permanently reside. Extraterritoriality stands as an obstacle in the way of opening China to the residence of foreigners on account of their immunity from Chinese law and the improbability that the home government will be able to supply a

³²W. W. Willoughby, *Foreign Rights and Interests in China*, Baltimore, 1920, p. 72.

³³*Law Quarterly Review*. XIX, 316, quoted in Willoughby, *op. cit.*, p. 72.

³⁴Quoted from the pamphlet of the Chinese National Welfare Society in America, *The Shantung Question, A Statement of China’s Claims together with Important Documents Submitted to the Peace Conference in Paris, 1919*, p. 164.

³⁵*Almanach de Gotha*, 1921, p. 678.

sufficient number of consuls or other officials for adequate judicial purposes. Hence many business opportunities in the interior must be foregone as it is not possible to establish branch houses with resident foreigners in charge. Should extraterritoriality be abolished it is believed that the country could be opened to a much greater extent than at present.³⁶ It may be noted, however, that Germany, which has been deprived of the rights of extraterritoriality, has not been granted any additional privileges of trade and residence. According to the Sino-German Trade Agreement of May 20, 1921, German citizens are given the same rights to trade and residence as are open to the nationals of third nations.

Other disadvantages to foreigners are that in their dealings with one another they must take into account a confusing difference in laws; there is a wasteful duplication of courts; there is a difficulty in dealing with certain foreigners because of the inaccessibility of their courts; and there are certain procedural disadvantages resulting from the fact that the court has jurisdiction over the person of the defendant only. The plaintiff cannot be committed for contempt of court; and should the defendant have a good counterclaim to the plaintiff's action he cannot file it in the same suit but must start a separate suit in a court of the plaintiff's nationality. This last is the cause of great inconvenience as the counterclaim is a useful device frequently used in actions of a commercial nature.³⁷

It may be said, however, that these disadvantages to foreigners do not seem to have appealed with any great force to the foreign residents of China, who, as will be shown later, seem only too happy to remain under the system of extraterritoriality.

It has been the general policy of the western states to stipulate for a withdrawal of extraterritoriality upon condition that the oriental state shall bring its laws into accord with the occidental standards. This was the case in the withdrawal of extraterritoriality in Japan in 1899.³⁸ This is the case in a number of treaties with Siam,³⁹ and the stipulation is likewise found in a number of treaties with China, namely with Great Britain in 1902, with the United States and Japan in 1903, and with Sweden in 1908. The clause in the American treaty reads as follows: "The Government of China having expressed a strong desire to reform its judicial system and to bring it into accord with that of western nations, the United

³⁶See the article, "The Open Ports of China," by Edward T. Williams, in the *Geographical Review*, Vol. IX, No. 4, p. 306.

³⁷The Imperial Japanese Government *vs.* The Peninsular and Oriental Co., 1895, Appeal Cases 644; "The Government of Foreigners in China," A. M. Latter, *Law Quarterly Review*, Vol. XIX, p. 316.

³⁸See Hinckley, *op. cit.*, p. 183; John W. Foster, *American Diplomacy in the Orient*, Boston, 1903, p. 344, *et seq.*

³⁹For the text of the American treaty, negotiated Dec. 16, 1920, see the *Congressional Record*, April 27, 1921, p. 663.

States agrees to give every assistance to such reform, and will also be prepared to relinquish extraterritorial rights when satisfied that the state of the Chinese laws, the arrangements for their administration, and other considerations warrant it in so doing."

THE CHINESE LEGAL REFORMS

Until the latter years of the Manchu dynasty the penal code existing in China was very antiquated, having been promulgated in 1647. In the period succeeding the Boxer outbreak a number of reforms were attempted, which finally, after the establishment of the Republic, resulted in the provisional criminal code of March 30, 1912. Parts of a provisional code for criminal procedure are in force, the judiciary has been reorganized and a partial codification of commercial law has been effected. The results of these enactments has been to remedy, so far as the written law is concerned, a great many of the defects of the former system. The important reforms may be summarized as follows:

Reform of the System of Punishments

The old objectionable penalties have been revised in accordance with modern standards. Capital punishment by strangulation is the only death penalty retained, and this is inflicted within the prison walls. Banishment, wearing of the cangue and whipping with the bamboo have been discarded and instead a system of imprisonment and fines in accordance with modern ideas has been substituted.⁴⁰ A great many cases in which mitigation of punishment may be taken into consideration are also provided for.⁴¹

Prison Reforms

China has made much progress in the abolition of the wretched prison conditions which formerly existed. Forty-one modern prisons had been established in 1919 in the principal cities.⁴² The Rules for the Government and Administration of Prisons in China, issued by the Minister of Justice, December 1, 1913, are in harmony with modern regulations. They provide for prison labor upon useful work for which some remuneration shall be paid, rewards for good conduct and punishment for bad, proper sanitation, sufficient food and clothing for the prisoners, adequate heating at proper seasons, medical treatment and education of prisoners under eighteen years of age and for those above this age who desire it.

Separation and Independence of the Judiciary

Probably what will prove to be the most far-reaching and fundamental of these reforms is the provision for a separate, independent judiciary, trained in the law. The Constitution of Nanking provides as follows:

⁴⁰Provisional Criminal Code, Chapter VII.

⁴¹*Ibid.*, Chapter II.

⁴²Pamphlet of Chinese Welfare Society: The Shantung Question, etc., p. 190.

Article LI. Judges shall be independent and shall not be subject to the interference of higher officials.

Article LII. Judges, during their continuance in office, shall not have their emoluments decreased and shall not be transferred to other offices, nor shall they be removed from office except when they are convicted of crimes, or of offenses punishable according to law by removal from office.

A thorough legal education is necessary for judges and professional attorneys.⁴³ Undoubtedly such a system will in time do much to awaken a scientific spirit in the application of the law which would have been impossible when the courts were controlled by the executive. In fact, already in at least two important cases has the Supreme Court maintained its independence against the President in one instance and Parliament in the other.⁴⁴

Procedure Is More Humane

The old system of torture to extort testimony and confessions has been discarded according to the terms of the new law. It is provided that in the trial "nobody may thereby be unlawfully subjected to any degrading treatment."⁴⁵ As to the general rights of the accused during the trial, it appears that the procedure follows the continental rather than the Anglo-Saxon system. There is a secret preliminary examination with no provision for *habeas corpus*. The jury trial, which was used in the early stages of reform, was abandoned after an unsatisfactory experience. No provision is made for cross-examination. The procedure during the trial, being left to the discretion of the judge, will depend for its fairness largely upon the character of the new Chinese judiciary.⁴⁶

The New Courts

The Law for the organization of the Judiciary provides for three grades of courts: (1) the District Court or the court of first instance; (2) the High Court or appellate court, established in the provincial capitals and at Peking; (3) the Supreme Court at Peking. According to the statement made by the Chinese representatives at the Peace Conference

⁴³"Law of the Organization of the Judiciary," Chap. XII; "Brief Survey of the Chinese Judiciary," by W. Y. H., *Chinese Social and Political Science Review*, Vol. V, No. 2, p. 169; "Law Reform in China," by Wang Chung-hui, *Chinese Social and Political Science Review*, Vol. II, No. 2, p. 13.

⁴⁴For an account of these two cases see "The Supreme Court in China," by F. T. Cheng, *Millard's Review of the Far East*, May 28, 1921, p. 673.

⁴⁵Provisional Regulations of the High Courts and Their Subordinate Courts, Article 33.

⁴⁶"The procedure of a trial shall be determined by the judge in accordance with the circumstances of the case, without any restrictions." Article 33, above cited; see also "Reform in Criminal Procedure," by Wang Chung-hui, *Chinese Social and Political Science Review*, Vol. V, No. 1, p. 1.

the Supreme Court and the High Courts have been established and the District Courts are in operation in forty-six districts, these being located at the more important centers of population.⁴⁷ To each of the courts are attached procurators or prosecuting attorneys.

In by far the greater number of districts the old system of courts prevails, the new courts not having been established.⁴⁸ In these districts the magistrates or administrative officers retain control of judicial matters. These officials are not part of the independent judiciary; but according to the plans of the Chinese Government this system will eventually be displaced by the establishment of the new courts all over China.⁴⁹

From the above description of the different phases of Chinese legal reform it can be seen that thorough and scientific plans have been laid to replace the former antiquated system with one which is fully equal to those existing in western countries. A judicial system, however, involves considerations that lie deeper than the outward form as expressed in the written statute, and there is some evidence that the Chinese Government has not been able to put the reforms into full operation.

Owing to the lack of control of the central government and the failure to execute its will throughout the provinces, the new statutes, especially as to procedure, have in many cases been disregarded. Dr. W. W. Willoughby says on this point:

Indeed, so far as the control by the central government of China of the courts in the provinces is concerned, the situation is not as satisfactory under the Republic as it was under the Empire. This lack of control was illustrated while the writer was in China. The Governor of the Province of Chekiang, as an exercise of his own personal judgment, abolished certain courts of justice which the Peking Government had established. Upon being criticized for so doing, he replied that the act had already been done and could not be corrected. He was then admonished in the future to let the central government know his intentions when he had in contemplation acts of the kind complained of. The Governor thereupon wrote his superiors at Peking that he did not wish to hear anything more about the matter since it was his opinion that the central government should never have established the courts in question.⁵⁰

Although the code prohibits the use of torture, yet it has by no means been done away with, according to the testimony of a number of missionaries and newspaper correspondents in the interior of China. For example, the correspondent of the *North-China Daily News* for East Szechwan has written concerning the disturbed conditions in that province, stating that

⁴⁷Pamphlet of Chinese Welfare Society, cited above, p. 188.

⁴⁸According to Morse, *op. cit.*, Vol. I, p. 14, there were in 1906, 1470 districts in the Chinese provinces and Manchuria.

⁴⁹For a description of the courts see "The Chinese Judiciary," by Yü Chüan-chang, *Chinese Social and Political Science Review*, Vol. III, No. 1, p. 1.

⁵⁰Willoughby, *op. cit.*, p. 69.

there have been instances in which Chinese have been executed without trial and that torture has often been applied to obtain evidence.⁵¹ Rev. G. G. Warren, an experienced missionary in that country, tells of several instances in the Province of Hunan in which torture has been used as in the former days.⁵² And Rodney Gilbert, in an article on Russians under Chinese Jurisdiction, has set forth a number of instances of cases arising since the withdrawal of recognition from the Russian Government in which the enlightened criminal procedure above described has not been adhered to.⁵³

It must be admitted that some of the evidence on this point comes from persons who are interested in the maintenance of extraterritoriality in China, and their statements must be taken with due allowance for partisanship. Nevertheless there is sufficient testimony of this sort to raise a serious question as to whether the Chinese administration of justice is, or will be in the near future, of such a quality to warrant the relinquishment of extraterritorial rights. The burden of proof is upon China. When that country is able to show affirmatively that the new system of laws has been established and is working satisfactorily and normally, then the United States should be willing and anxious to abide by her treaty promise and, in conjunction with the other powers concerned, relinquish our exceptional jurisdiction.

⁵¹In the issue of Jan. 5, 1920, quoted in the article, "Has Extraterritoriality Outlived Its Usefulness," *American Bar Association Journal*, Vol. VI, p. 224.

⁵²"The Foreigners' Safeguard in China," *North-China Herald*, April 2, 1921, p. 45.

⁵³*North-China Herald*, April 16, 1921, and April 23, 1921. See also *North-China Herald*, Vol. 115, pp. 131, 449, 826; Vol. 118, p. 426; Vol. 122, p. 678.

EDITORIAL COMMENT

THE SECOND ASSEMBLY OF THE LEAGUE OF NATIONS

Convened on September 5, and adjourned on October 5, the Second Assembly of the League of Nations was in session exactly one calendar month. Thirty-nine nations were represented when the session opened; three were added during the first few days; and three others, Esthonia, Latvia, and Lithuania, were admitted during the session. Thus, forty-five representatives of the fifty-one members of the League, were present. Argentina, Honduras, Guatemala, Nicaragua, Peru, and Salvador were not represented.

Dr. Wellington Koo, as Acting President of the Council, delivered the opening address, summarizing the achievements of the League since the last session, and was warmly applauded by the Assembly, the two hundred journalists, and the invited spectators in the galleries. At the afternoon session Jonkheer van Karnebeek, Minister of Foreign Affairs of the Netherlands, was elected President, and made an address in which he emphasized the substitution of law for armed force in international affairs.

On the following day, six committees were appointed, dealing with (1) Constitutional and Legal Questions; (2) Transit, Health, and Economic Matters; (3) Reduction of Armaments and Blockade; (4) Finances and Internal Organization of the League; (5) Humanitarian and Social Questions; (6) Political Questions. Thus organized, the Assembly was able at the end of the second day to take up the work of its agenda.

The first few days of the session were devoted to the discussion of the Report of the Council in a general debate, in which seventeen different nations were represented. The discussion developed very wide differences of opinion, but was characterized by much frankness of expression and in general by a spirit of toleration. The broad interval between the Council, ruled by the will and interests of the Great Powers, and the Assembly, composed largely of small States, was made evident in the course of the debate, which developed evidence of the sensitiveness of the Council to the criticisms of Members of the Assembly. This was conspicuously manifested in the rebuke administered by the First British Delegate, Mr. Balfour, to the sentiments expressed by Mr. Branting, the First Delegate of Sweden, who expressed the conviction that the Council had not risen to the height of its opportunity. It was evident throughout the meeting that the reservation to itself by the Council of exclusive authority to make certain deci-

sions is not agreeable to the representatives of the smaller States, the influence of which, even in its aggregate, where it would be reasonable that it should count, does not have its due effect. As time goes on, there promises to be an urgent endeavor to determine whether four Great Powers, one of them Asiatic and three European, shall be able with the assent of one of the temporary Members of the Council to lay down the law to the Assembly, composed of over fifty States, yet unable to share in important decisions affecting their interests.

The one great triumph of the meeting of 1921 was the success of the plan for the election of a Permanent Court of International Justice. It had been feared that, since the Council and the Assembly were to vote separately in the election of candidates, already nominated by the Hague Tribunal, it might require many days to complete the election. To the gratification of all the result was accomplished without long delay and without friction between the two electoral bodies, although their ballots differed somewhat persistently. The Committee of Mediation provided for in the Court Statute was necessary to break a deadlock, but its good offices were adequate, and fifteen eminent men were chosen to constitute the Court. Among the nine judges who obtained an absolute majority in both bodies was our fellow-countryman, the Honorable John Bassett Moore.

Regret was expressed by representatives of other countries that the American members of the Hague Tribunal had not participated in the nomination of candidates, and that the United States was not represented in the electoral bodies. It was understood that this abstention not only reaffirmed the decision of the United States not to become a Member of the League but that it went far toward emphasizing the fact that the Court, although representing so many States, is not, and is not likely to be, recognized as an international tribunal in the full sense, since representation in it is, by the Statute of the Court, primarily confined to members of the League, with permission to outsiders to appeal to the Court only on conditions to be laid down by the Council. It is, therefore, open to the observation that it is not a universal court but the private court of the League.

The failure to accept the full jurisdiction of the Court, without the consent of both parties, even in justiciable cases, does not advance judicial resort beyond individual option, and thus, although a tribunal is created, it is accessible only as between those nations who mutually agree in each case to submit to its judgments. Happily, eighteen States have now accepted complete jurisdiction in all justiciable cases.

Turning now to some of the more vital matters discussed by the Assembly, but without attempting an exhaustive treatment of the conclusions reached, one of the most important was the reduction of armaments. The fact that the cost of military establishments in Europe is now, notwithstanding the conventional disarmament of Germany, more than three

times what it was before the Great War, rendered the problem a pressing one. The idea of budgetary control, together with the prohibition of the manufacture and traffic in arms, was the subject of an elaborate report and of discussion. The conclusion reached was that, "valuable and important as the proposals are which have been discussed, it is nevertheless true that they do not touch the kernel of the question. If they were all carried out, only preliminary steps would have been taken toward the limitation of armaments."

It is provided in Article 8 of the Covenant that the Council shall "formulate schemes" for the reduction of armaments, and it was brought to the attention of the Assembly that no such scheme had been formulated. It was natural, therefore, that the Council should be urged to perform this duty, and this is in substance the recommendation made.

The recommendation presents, and appears to have been felt to offer, only a faint hope of results. The truth is, that the reasons for armament are conditions over which the Council has little control, unless it decides to resort to force, which it is disinclined to do. The dictation of the Council on the subject of armament would be resented, and the exhortations it might make to diminish it would have greater influence if they were reinforced by example, which thus far has not been made impressive. It lies with the States which are armed against one another themselves, by their mutual conciliation of their interests and assurances of peaceful purposes, to remove the causes of armament. Unfortunately, the difficulty of this procedure is increased by the fact that the boundaries of many of the States and the economic consequences of these divisions were imposed by the Supreme Council of the Allies at Paris, and were not adjusted by mutual agreement between the States themselves. Not until this latter method is resorted to and the community of interest between them is made the basis of understanding by their own acts, will the reduction of land armament have any prospect of achievement.

The conclusion reached in the Assembly was that "there seems to be no reason why the Council, in performance of the duty imposed upon them by the Covenant, should not lay down the general lines of a policy for the limitation of armaments." The important matter, however, is not the general lines of policy but the actual acceptance of definite apportionments by the different armed powers, now so numerous and independent. They would be likely to accept the policy "in principle," and then debate regarding their apportionment before the Council, stating their reasons why they could not accept it. Such a procedure would, of course, lead to nothing. They would insist, and not without reason, upon being the final judges of what armed defense they need.

The truth of this statement seems to have been finally grasped by the Committee of the League, which says in its Report, referring to the United States: "The naval strength of this Power makes any scheme of naval

disarmament impossible without her support, and it is for this reason, among others, that the Committee warmly welcomes the forthcoming Conference at Washington, and trusts that it may be fruitful in securing a large measure of reduction of armaments."

Generalizing this statement, it is evident that no strong country will permit its armament to be reduced by dictation. It will reduce its armament only by its own consent. If, therefore, the European nations will themselves propose to one another a reduction in their own armaments, following the example of Washington, in a manner to reduce the existing means for national defense proportionately, there is no reason why immense reductions could not be immediately made; and, if accompanied by reciprocal economic arrangements between them, the remedy for the impoverishment of Europe would be found to be in its own hands.

Such a procedure would imply a change in the method of the League of Nations. It would involve the substitution of cooperation and mutual agreement for coercion and the enforcement of obligations.

Such a change of method was foreshadowed in nearly every report and in the general trend of discussion throughout the whole session of the Assembly. This was particularly noticeable in the matter of proposed amendments to the Covenant.

A preliminary question regarding amendments produced a hesitation to proceed in a radical manner, since some members of the Assembly believed that unanimity was required, while others objected that this would make amendment almost impossible. As the Covenant itself makes no provision as to the method of submitting amendments to the nations for their ratification, and a division of opinion was evident and might lead to extensive controversy, it was unanimously decided that provision should be made for future amendment by a three-fourths majority of the Assembly and that no amendment should be made at the time without the assent of three-fourths of the members.

No amendments of vital importance were, in fact, definitively adopted, but several were rejected. The Canadian proposal to eliminate Article 10 from the Covenant was postponed till the next meeting. The Argentine proposal that "all sovereign States recognized by the Community of Nations be admitted to join the League of Nations in such a manner that if they do not become Members of the League this can only be the result of a decision on their part," was considered at length; but, in the absence of the Argentine Delegation, a decision was deferred. The Colombian proposal that unanimity be not required for Assembly decisions regarding articles of the Covenant was withdrawn.

The Czecho-Slovak amendment regarding the approval of special agreements between a limited number of members of the League was not adopted, it being apprehended that some agreements of this kind might

result in combinations that would not be in the spirit of the League, though others might be of great advantage.

The conviction that certain radical changes in the Covenant would eventually have to be made was general. Some of the obligations of the Covenant had clearly awakened fears that it would be difficult and even impossible to fulfill them. They were, therefore, brought forward with a view to modifying them by interpretation.

The purpose of Article 18, for example, was to prevent the making of secret treaties. It was known, however, that several military conventions had been signed which had not been and probably would not be registered. What then was to become of the obligation of that article, which requires that all treaties, in order to be binding, must be registered with the League? To cover the military engagements, it was proposed in committee that "treaties of a purely technical or administrative nature which have no bearing on international political relations" need not be registered. The equivocal character of this proposal was evident, and when it came before the Assembly it was pointed out that it might fatally invalidate Article 18. It was, therefore, not adopted as an amendment, but passed on to the next Assembly, with the understanding that, "in the meantime, Members of the League would be at liberty to interpret their obligations under Article 18 in conformity with the proposal made."

The obligations incurred under Article 16, which proved such an insurmountable obstacle to acceptance of the Covenant by the United States, were made the object of an analysis which went to the very heart of the compact.

This article provides that, "Should any Member of the League resort to war in disregard of its covenants under Articles XII, XIII, or XV, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations," etc.

The evident inconvenience of fulfilling this obligation, the possible consequences of loss to the nation severing all trade and financial relations with a neighboring State upon which it was economically dependent, and the impossibility of making such an economic blockade effective when undertaken against a strong nation, had caused a general disposition to modify this article. It was argued in the Special Blockade Commission that an "act of war" is not necessarily a "state of war," and therefore the obligation would not automatically go into effect, unless a member of the League chose to consider it a "state of war"; a subterfuge the transparency of which is clear the moment it is considered that by the terms of the article it is explicitly an *act* of war which brings the obligation into operation, and not a *state* of war; a consideration which renders the attempt to make a distinction between an act and a state of war wholly beside the mark.

The second attempt to evade the obligation of the article was the proposal to interpellate between an act of war and an economic blockade a decision by the Council that the obligation had come into effect as a necessary preliminary to action; a decision wholly superfluous if not positively ruled out by the precise terms of the article, which not only makes no mention of the Council with reference to economic blockade but distinctly pledges all the members of the League severally and *immediately* to sever all trade or financial relations. It is not until military or naval force is brought into question that the Council, according to Article 16, has any part to play in punishing a delinquent. It then becomes the duty of that body "to recommend to the several Governments concerned what effective military or naval force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League."

Interpretation having thus failed utterly to soften the obligation of each member severally and immediately to institute an economic blockade against an offender,—a duty upon which so much reliance was placed as a means of avoiding sanguinary war,—a series of amendments to the Covenant were approved by the Assembly without dissent, subject to the prescribed ratification of all the members of the Council and half the states represented in the Assembly. The first amendment thus adopted was that it is for the Council to give an opinion whether or not a breach of the Covenant has taken place, though it rests with each State to make its own final decision in this matter in so far as its responsibilities are concerned.

In order to secure identity of action, another amendment was accepted, to the effect that the Council will notify all members of the League as to the date which it recommends for the application of economic pressure under this article, and until this is done no action is to be taken.

Thus, the economic blockade which was imposed automatically and imperatively upon all members of the League in case of violation of the Covenant, is to occur, if at all, only when the Council, in which one single vote can prevent action, recommends it and fixes the date. Pending formal ratification, these provisional amendments are to constitute "the rules for guidance" for members of the League.

As to Mandates, it is difficult to find evidence that the Assembly has any serious control over them. They were discussed on the basis of a report by a special committee, and the report was approved by the Assembly. Certain members were disposed to press for an immediate definition of Mandates, but the Assembly finally assented to leaving the whole subject in the hands of the Council, which desired not to be embarrassed pending negotiations with the United States. The Official Summary of the Secretariat states, that "the Mandate situation has generally been admitted to be one of great importance and of great difficulty, and there was a considerable divergence of opinion." The conclusion appears to be war-

ranted that, if it was the original intention to internationalize in any real sense the great areas taken from Germany in Africa and the Pacific Ocean, and from Turkey in Asia, that purpose has not been realized.

With regard to the League of Nations generally, as its actual character was manifested in the sessions of the Second Assembly, it would appear that it is undergoing a radical transformation not contemplated by its founders. By its statutes it is undoubtedly a super-government. In actual practice it is not. The central and controlling international authority in Europe is not the League, but the Supreme Council of the Allied Powers. To a certain extent the members of the Supreme Council and the Council of the League are identical, but all the force being in the Supreme Council and only the obligations in the League, it is the former that is the only super-government in the proper sense of the word.

The Assembly without the Council would be a more useful body than it is, for it would then have an increased sense of responsibility. That it is even now in many respects useful admits of no doubt. It discusses with great intelligence many current questions. The Secretariat is a busy international clearing-house served by capable and industrious men. It does what such an office can, but it is without decisive authority. So long as the Supreme Council continues, the League can have no other authority than that which the Supreme Council permits it to have; and that is none, apart from the powers of the League Council which it controls.

The impression one derives from the Assembly is that it is inspired by noble motives but lacking in courage. It does not venture boldly to lay hold upon the most vital realities of the European situation. It is not fully representative of Europe; and, bound by its Covenant, which is an article in a treaty of peace imposed by war, it cannot be. Its most far-sighted members know this and privately admit it. I thought that, in some cases, they recognized this with sadness. Quite evidently, the League is gradually seceding from the obligations of its Covenant. To become a real association for peace, it must transform itself fundamentally. And this, in my belief, it will continue to do. At present it is just a "league," not the Society of Nations.

I cannot close this editorial without a personal word of appreciation of the courtesy, the hospitality, and the fine faith and devotion of the personnel of the Secretariat of the League, some of whom are our own fellow-citizens, whose place is made less happy because their country is not a member of the League. It is greatly to their credit that with patience and unflinching courtesy they are willing to listen to the reasons why it is not a member.

DAVID JAYNE HILL.

SOME THOUGHTS ON THE MEXICAN OIL QUESTION

It is impossible in a brief editorial to go into all the minutiae of this perplexing and complicated question. Nevertheless it may be of value to lay before the reader some of the considerations involved and the general rules growing out of the intercourse of sovereign states which relate to such problems.

For certain purposes, mineral oil has replaced coal as a desirable fuel. The oil measures thus far uncovered in Mexico involve vast pools quickly drained, so that their regulation is of immediate importance. Mexican oil is not locally used but is exported. That country is potentially rich in many products but actually poor and torn by years of factional conflict.

It is natural and legitimate therefore that any government in Mexico should desire to realize as much as possible from its mineral assets. Some two hundred million dollars of American money are estimated to have sought investment in Mexican oil. There has thus arisen a conflict of interest between the foreign capitalist who desires to mine and export oil as cheaply as possible and the sovereign which wishes to make as much as possible out of its product before it is taken out of its jurisdiction. This is attempted in two ways, by taxation and by a duty on exports.

Under Mexican law aliens may not hold land. This is the law in many other countries also and in some of the states of the American Union. To exploit Mexican oil territory, therefore, local companies were organized under local law but employing foreign capital. The possession of the surface carried with it the sub-soil minerals, including petroleum. If disputes arose the foreign lessors or owners relied upon the help of their governments when the protection of the courts seemed to fail them. Their suspicions were roused by a demand of the Mexican Government that interests in such companies owned by alien capital must renounce this right to protection from their governments. There also appeared a tendency on the part of the Mexican Government to separate surface and sub-soil interests, nationalizing the latter. But in the main oil rights acquired by aliens were undisturbed until 1917, when the new Constitution appeared. This had been adopted under Carranza's influence. The Pershing invasion of Mexico and the Mexican intrigue with Germany aimed at the United States, prior to this, naturally led to distrust of Carranza's good faith. The new Constitution made a radical change in the oil situation, though explicitly providing that it and the legislation growing out of it should not be retro-active.

It separated surface from sub-soil property, nationalizing the latter. It required payment for oil taken out in the shape of rentals and royalties to the government.

On failure to comply with various rules and regulations, it threw lands open to new entries.

It held that "foreign capital shall submit to the new laws by waiving its nationality and organizing as Mexican corporations."

And it attempted to condition drilling permits upon compliance with recent decrees. Moreover it conditioned continued operation of oil lands upon government regulations yet to be issued.

There was further a disposition shown, in spite of the non-retroactive clause of the new Constitution, to apply these new conditions to oil leases previously acquired. Such leases were protected by the court if work had been done on them, but not if sub-soil rights existed only in "expectancy," the Supreme Court granting the owner merely "the faculty of exploring and exploiting" and recognizing acquired rights only when this faculty had been "translated into positive acts" before May 1, 1917, the date of the new Constitution. I quote from a discussion of the Texas Company's *Amparo* case in the November journal of the American Bar Association by Edward Schuster of New York.

The Supreme Court also declared the export duties upon oil to be constitutional.

Enough has been said to describe the nature and variety of the attacks upon foreign oil property in Mexico. Each step in restriction was met by diplomatic argument and remonstrance. This brings us to the main point at issue. How far may a government go in protecting the property rights of its citizens against attack, executive, legislative and judicial, in a state with which that government is at peace?

Fundamentally beyond question, a state may do what it likes within its own jurisdiction. If unduly restrictive its acts shut out foreign capital. If it invites foreign capital, such policy implies protection. But in no case does foreign capital enjoy rights superior to the native.

There is a passage in one of Webster's papers as Secretary of State in 1851 which states clearly, and correctly as the writer thinks, the status of the nationals of one country resident in another, of a less advanced civilization:

They have chosen to settle themselves in a country where jury trials are not known; where representative government does not exist; where the privilege of the writ of *habeas corpus* is unheard of; and where judicial proceedings in criminal cases are brief and summary.

Having made this election, they must necessarily abide its consequences. No man can carry the agis of his national American liberty into a foreign country and expect to hold it up for his exemption from the dominion and authority of the laws and the sovereign power of that country, unless he be authorized to do so by virtue of treaty stipulations.

If true of alien persons, it is still more true of alien property.

Such is the general principle involved. But there are two contingencies when protection to property rights thus situated and thus jeopardized is due. First in case of discrimination; second in case of confiscation.

If a country learns that its subjects are placed in a foreign state in an inferior position to the subjects of other foreign states there resident, then a remedy for this inequitable inferior position is due him.

It is I believe but justice to say that there is no claim and no evidence that Mexico has thus discriminated between aliens. But as the interests of our nationals are large, those interests have suffered largely.

Nor is there direct evidence of confiscation pure and simple. Heavy burdens have been placed by the policy and the legislation of Mexico upon foreign capital which may prove too grievous to be borne. Whether such burdens are tantamount to confiscation, while judicial protection is wanting, whether therefore protection from our own government is due, is a difficult question, which must be determined by the circumstances of each case and the animus shown by local authority.

That Mexico should drive out foreign capital and hinder her own development by burdens of many kinds too heavy to be borne is unjust and foolish, but it is not illegal in the eye of international law. For we must always remember that Mexico is a sovereign State. We must either respect her sovereignty or deny it, placing her in the category of countries which are so devoid of political organization and civilized status that they can be dealt with only by force. We cannot mix the two.

T. S. WOOLSEY.

LANDING AND OPERATION OF SUBMARINE CABLES IN THE UNITED STATES

By an Act of Congress, approved May 27, 1921,¹ license from the President of the United States is required for landing and operating submarine cables connecting the United States with a foreign country, and in general, such submarine cables are placed under administrative control.

This is consistent with the established policy of the United States, particularly since 1869, though occasionally there have been official rulings which were not in complete accord with this policy.

The landing of submarine cables was particularly brought to the attention of the authorities of the United States through the attempt, by the Western Union Telegraph Company, to land at Miami Beach, Florida, without full governmental authorization, a cable connecting with British lines. There is much material upon this matter, such as official correspondence, hearings before the Senate, and court proceedings. Such correspondence as the following shows something of the situation:

¹ Printed in the Supplement to this JOURNAL, p. 35.

ADMIRAL E. A. ANDERSON,
United States Navy,
Miami, Fla.

MIAMI, FLA., August 24, 1920.

DEAR SIR:

The following message has just been received by me from General Traffic Manager Blonheim, New York, with a request that I submit the same to you:

"Acting under the usual form of permit from the War Department, which type of permit has always been sufficient for laying cables in inland waters, we have assembled the labor and materials at Miami and are dredging the trenches at the draws. To delay this work entails unnecessary expense for labor and may render it necessary to redredge, and in the circumstances we should be allowed to proceed.

"This new route between Miami Beach and Miami is much needed for our Key West connection irrespective of what may be the final decision about the Barbados cable."

Will you kindly reply at your earliest convenience?

Yours truly,

J. F. RICHARDS,
Cable Superintendent.

MR. J. F. RICHARDS,
Cable Superintendent.

MIAMI, FLA., August 24, 1920.

SIR:

Referring to your letter of this date I have to inform you that the Navy Department has taken up the question of running the cable between Miami and Miami Beach with the State Department. I will be informed of the decision. Pending such information my orders will not permit the running of this cable.

Respectfully,

E. A. ANDERSON,
Rear Admiral, United States Navy.

MR. J. F. RICHARDS,
Cable Superintendent.

MIAMI, FLA., August 26, 1920.

SIR:

A dispatch from the Navy Department, received this date, directs me not to permit the laying of the cable between Miami and Miami Beach until instructions are received.

Respectfully,

E. A. ANDERSON,
Rear Admiral, United States Navy.

The Navy Department, thus called upon to prevent landing, carried out instructions.

The Courts were asked to issue an injunction enjoining the Secretary of the Navy from preventing the landing of the cable. The latter passed through the lower courts up to the Supreme Court where the case was pending when the Act of Congress was passed.

This law placing administrative control of the cable landing in the hands of the Executive is in conformity to long practice. Authority to withhold or revoke the license on just ground is retained, while vested interests are protected. There is also provision for initiating procedure

by the Government itself, and the Act is extended to all territory under the jurisdiction of the United States.

The law of May 27, 1921, embodies the accepted principle of the right of a state to exercise jurisdiction within its own boundaries.

GEORGE GRAFTON WILSON.

THE RESOLUTION OF THE CONFERENCE ON LIMITATION OF ARMAMENT RESPECTING EXTRATERRITORIAL RIGHTS IN CHINA

Every friend of China must experience gratification in the Resolution of the Conference on Limitation of Armament, December 10, 1921, dealing with extraterritorial jurisdiction in that country. In its preamble that Resolution takes note of the various treaties whereby the United States and Great Britain and Japan have within a score of years agreed to aid China in judicial reforms with a view to ultimate relinquishment of extraterritorial rights.¹ It announces the sympathetic disposition of the assembled Powers towards the aspirations of China respecting jurisdictional and political and administrative freedom; it emphasizes the circumstance that appropriate action depends upon "the ascertainment and appreciation of complicated states of fact in regard to the laws and the judicial system and the methods of judicial administration of China" which the Conference is not in a position to determine. It is accordingly resolved:

That the governments of the Powers above named shall establish a commission (to which each of such governments shall appoint one member) to inquire into the present practice of extraterritorial jurisdiction in China and into the laws and the judicial system and the methods of judicial administration of China, with a view to reporting to the governments of the several Powers above named their findings of fact in regard to these matters and their recommendations as to such means as they may find suitable to improve the existing conditions of the administration of justice in China and to assist and farther the efforts of the Chinese government to effect such legislation and judicial reforms as would warrant the several Powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality.

It is declared that such Commission, to be constituted within three months after the adjournment of the Conference, is to be instructed (in accordance with detailed arrangements to be agreed upon) to submit its

¹See also in this connection Act of March 23, 1874, Chap. 62, 18 Stat. 23, contemplating the relinquishment of the exercise of judicial functions by American officials in certain countries upon receipt by the President of satisfactory information that there were organized therein local courts on a basis likely to secure to citizens of the United States the same impartial justice which they then enjoyed by virtue of the exercise of judicial functions by American officers.

report and recommendations within one year after the first meeting of the Commission. Each of the Powers retains the right to accept or reject all or any portion of the recommendation of the Commission; but in no case is its acceptance of any portion thereof either directly or indirectly to be dependent on the granting by China of any special concession, favor, benefit or immunity, whether political or economic. Provision is also made for the adherence to the Resolution of non-signatory Powers having by treaty extraterritorial privileges in China, upon specified notice of their accession thereto. An additional Resolution adverts to China's satisfaction in the sympathetic disposition of the Powers assembled, and to its declared intention to appoint a representative to sit with the Commission as a member thereof, and to China's freedom to accept or reject any recommendations of that body; and it announces, furthermore, the readiness of China to cooperate in the work of the Commission and to afford it every possible facility for the accomplishment of its tasks.

It seems worth while to take note of a few considerations which must and doubtless will be reckoned with by the Commission in undertaking to formulate practical constructive plans.

Heretofore, in arrangements for the relinquishment of extraterritorial jurisdiction, the establishment and operation of judicial reforms have been regarded as a condition precedent to the surrender of jurisdictional rights. Thus President McKinley, in his message of December 5, 1899, dwelt at length upon the achievement of such reforms by Japan prior to the operation August 4, 1899, of its treaty with the United States of November 22, 1894, contemplating the relinquishment of extraterritorial jurisdiction.² The annex to the recent treaty between the United States and Siam of December 16, 1920, also gave heed to that principle.³ In the present case it may be assumed that the Commission will make earnest endeavor to advise or devise such judicial reforms as are deemed essential to enable Chinese courts to bear well the burdens to be imposed by any transfer of jurisdiction to them.

There are, however, certain other considerations which although indirectly related to the matter of judicial reform, appear to have a distinct bearing upon the solution of the complicated problem involved. Attention is briefly called to a few of them.

The Republic of China asserts dominion over a vast area wherein its claims of sovereignty are undisputed by foreign states. Its population is thus spread over a wide territory within relatively small parts of which

²U. S. For. Rel. 1899, XXIV.

³U. S. Treaty Series, No. 655. It may be observed that this treaty was proclaimed by President Harding, October 21, 1921.

The Treaty of Sèvres of August 10, 1920, did not appear to contemplate any relinquishment by the Powers of extraterritorial privileges in Turkey, but rather a plan looking to the modification or reform of the Capitulatory system there prevailing. See Art. 136, Supplement of this Journal, XV, 179, 207-208 (July, 1921).

there is contact with the western world or with the civilization produced by it. The situation in this regard differs sharply from that which has ever confronted either Japan or Siam. In certain parts of China there is believed to remain much difficulty (apart from any of a purely legal or constitutional aspect) in protecting foreign life and property from injustices begotten of ignorance or passion. States avowing attachment to the principles of western civilization have experienced a like difficulty when possessed of extensive territories. Mexico has always been face to face with it. Less than fifty years ago the United States found itself, in the circumstances of the particular case, either unable or unwilling to protect numerous Chinamen in Wyoming against wholesale mob violence. Thus, in the case of China, the question arises as to what should be the territorial limits within which extraterritorial jurisdiction may wisely and ultimately be relinquished. If those limits should not be co-extensive with the territory under the flag of the Chinese Republic, there still remains the problem as to whether they should be extended to all places open to foreign trade or residence, or to foreign missionary enterprise; or whether the opening by Chinese authority of any place to any form of foreign life should simultaneously operate to clothe Chinese tribunals with fresh rights of jurisdiction therein; or whether some other principle should indicate the geographical bounds within which a transfer should be effected. Obviously the fitness of any Chinese courts, especially those of first instance, to adjudicate with respect to foreigners would seem to be dependent in large degree upon the location of the forum in a community in close contact with western life by reason of the number of the aliens there residing. The Commission may possibly, therefore, reach the conclusion that, at the appropriate time, the yielding of jurisdiction to Chinese tribunals should generally follow a scheme of geographical progression, limited at first to zones or areas wherein conditions are acknowledged to be most favorable for the successful operation of the transfer.

Experiments in the exercise of Chinese jurisdiction over foreigners are likely to be most fruitful in cases where the consequences of a denial or miscarriage of justice serve to expose to the smallest degree of harm the alien litigants involved. Thus jurisdiction in civil matters (under a code sharply distinguishing civil from criminal procedure, and preventing the imposition of criminal penalties in cases arising from tort or contract) may be deemed worthy of relinquishment prior or preliminary to the surrender of jurisdiction over criminal cases. Again, distinctions according to the nature of offenses may suggest a reasonable theory or method of giving up jurisdiction in criminal matters. Thus it may be deemed expedient at the outset to test Chinese magistrates sitting as criminal judges with adjudications over offenses regarded (at least in America or England) as misdemeanors, before yielding jurisdiction in cases where the offense possesses the character of a crime, and would in consequence, according to

the codes of any of the interested foreign Powers, subject a guilty person to the imposition of a grave penalty. If jurisdiction is to be ultimately relinquished to Chinese courts where aliens are charged with the commission of heinous offenses, ample provision for appeals by the simplest processes and to the Supreme Court of the Republic should obviously safeguard the rights of accused persons, especially if they are deprived of recourse to the judicial as distinct from political aid of their own countries.⁴

In its exercise of duties of jurisdiction a state may find that certain of its tribunals and processes which amply suffice in the administration of justice with respect to nationals are wholly inadequate when an alien is a party to the litigation, and especially if he be the victim of local prejudice. The United States has had such an experience. In cases, for example, arising from mob violence directed against resident aliens, it has been found impossible to convict offenders in the State courts.⁵ Both the Constitution of the United States and certain acts of Congress have given heed to the general problem, by conferring upon aliens the right under some circumstances to invoke the aid of the Federal Courts.⁶ Such action is not designed to afford the alien more favorable treatment than is accorded the national, but rather to place within reach of the former by a different process, an equal opportunity to secure such a degree of justice as should be available to every resident who invokes the aid of the courts. This principle is to be reckoned with in any project purporting to clothe Chinese courts with jurisdiction over aliens. It may be found that there exist, or are capable of establishment, certain Chinese tribunals which, by reason of their composition or grade or organization or personnel are peculiarly fitted for the task of adjudication, and, like the Federal courts of the United States, able to afford a solid means of protecting the rights of alien litigants. Such tribunals should be utilized accordingly, regardless of

⁴According to Prof. Willoughby: "The most promising mode by which the Chinese could be aided in bringing about a situation under which it would be expedient to abolish extraterritoriality would be for the Powers to permit the Chinese, as a first step, to establish courts for the trial of cases in which foreigners are parties either as defendants or plaintiffs, that would be truly 'mixed' in character; that is, tribunals presided over by two or more judges of whom one at least should be a foreigner learned in the law and experienced in its administration. These courts would be Chinese courts, and the judges Chinese officials, the judges who are foreigners, however, to be appointed upon the nomination of, or at least, with the approval of, the foreign offices of the Treaty Powers." (W. W. Willoughby, *Foreign Rights and Interests in China*, Baltimore, 1920, 79-80.)

⁵In at least two instances, however, damages have been collected by dependents against a county or municipality rendered liable in such cases by local statute, through an action maintained in the Federal Court.

⁶See Constitution, Art. III, Section 2; see also paragraph 17 of Federal Judicial Code, 36 Stat. 1093, clothing the District Courts of the United States with original jurisdiction "of all suits brought by any alien for a tort only, in violation of the laws of nations or of a treaty of the United States."

local practices or laws withholding from them jurisdiction in matters pertaining solely to nationals of China.

A further consideration must not go unheeded. It might prove disastrous to yield irrevocably privileges of jurisdiction, in spite of judicial reforms or geographical limitations or skilfully devised restrictions and distinctions pertaining to criminal matters, until at least after the lapse of an experimental period. The success of Chinese judges in administering justice in matters concerning solely Chinese litigants or Chinese persons charged with crime under the most approved system devised to safeguard the rights of such individuals would hardly suffice as a test. There would seem to be required opportunity for Chinese tribunals under a new régime to adjudicate with reference to aliens under conditions such that in the event of an abuse of power, cases might be removed by a process of requisition to the judicial authorities of their own State. The recent convention with Siam offers an interesting precedent. It will be recalled that it is there provided that pending a certain interval of time following the promulgation and operation of certain specified laws and decrees, the diplomatic or consular representative of the United States may requisition causes pertaining to American citizens pending in the lower Siamese courts. This principle may be well applied and extended in the case of China. The Commission may, for example, wisely conclude that during a specified interval of time the appropriate foreign authority may requisition cases pending in the Chinese courts, and even in communities where there is reason to believe that the relinquishment of jurisdiction is most safely yielded. During such an experimental period it may be fairly presumed and possibly provided in terms, that normally cases should be left in Chinese hands, and that no requisitions should be made on frivolous grounds or at the caprice of a foreign official. Moreover, it may even be provided that where a case is requisitioned the appropriate Chinese code rather than that of the foreign State should be applied by its judicial representative. The principle needs emphasis in any formal plan for ultimate adoption that the experimental period is designed not merely to safeguard foreign rights, but equally with a view to ascertain the essential fitness of Chinese tribunals to exercise jurisdiction over foreigners.

The western world is far from disposed to thwart the aspirations of China. The Resolution of the Conference reflects the general sentiment. Chinese statesmen may, however, serve well their own country by perceiving that the shortest path to the attainment of jurisdictional independence is likely to involve the early and complete satisfaction of a series of elementary and progressive tests to be laid down by friendly foreign Powers.

CHARLES CHENEY HYDE.

UPPER SILESIA

On October 12, 1921, the Council of the League of Nations unanimously adopted a recommendation fixing the boundary line between Germany and Poland in Upper Silesia as follows:

The frontier-line would follow the Oder from the point where that river enters Upper Silesia as far as Nieborschau; it would then run towards the northeast, leaving in Polish territory the communes of Hohenbirken, Wilhelmsthal, Raschutz, Adamowitz, Bogunitz, Lissek, Summin, Zwonowitz, Chwallenczitz, Ochojetz, Wileza (upper and lower), Kriewald, Knurów, Gieraltowitz, Preiswitz, Makoschau, Kunzendorf, Paulsdorf, Buda, Orzegow, Schlesiengrube, Hohenlinde; and leaving in German territory the communes of Ostrog, Markowitz, Babitz, Gurek, Stodoll, Niederdorf, Pilchowitz, Nieborowitzer Hammer, Nieborowitz, Schönwald, Ellguth, Zabrze, Sosnica, Mathesdorf, Zaborze, Biskupitz, Bobrek, Schomberg; thence it would pass between Rossberg (which falls to Germany) and Birkenhain (which falls to Poland) and would take a north-westerly direction, leaving in German territory the communes of Karf, Miechowitz, Stollarzowitz, Friedrichswille, Ptakowitz, Larischhof, Miedar, Hanusek, Neudorf-Tworog, Kottenlust, Potemba, Keltach, Zawadski, Pluder-Petershof, Klein-Lagiewnik, Skrzidlowitz, Gwoszdzian, Dzielna, Cziasnan, Sorowski, and leaving in Polish territory the communes of Scharley, Radzionkau, Trockenberg, Neu-Bepten, Alt-Bepten, Alt-Tarnowitz, Rybna, Piassetzna, Boruschowitz, Mikoleska, Drathhammer, Bruschiek, Wüstenhammer, Kokottek, Koschmieder, Pawonkau, Spiegelhof (Gutsbezirk), Gross Lagiewnik, Glinitz, Kochschütz, Lissau.

To the North of the last place, it would coincide with the former frontier of the German Empire as far as the point where the latter frontier joins the frontier already fixed between Germany and Poland.¹

Although in the form of a recommendation, the action of the Council had the effect of a final decision, as each of the governments represented in the Supreme Council of the Allied Powers, by which body the question had been submitted to the Council two months earlier, had "formally undertaken to accept the solution recommended by the Council of the League."²

The history of this difficult and important decision relates back to the Treaty of Versailles and the efforts of the framers of that settlement to apply President Wilson's principles. Under the original conditions of peace handed to the German peace delegation on May 7, 1919, Upper Silesia was to be ceded to Poland, but as the result of the German protest against the proposed cession, it was decided to modify this portion of the peace terms so as to provide for a plebiscite. In communicating this modification to Germany the Allied Powers solemnly declared that it is not true that Poland "possessess no rights capable of being maintained in accordance with the principles of President Wilson" and that they "would have

¹Minutes of the extraordinary session of the Council of the League of Nations, Aug. 29-Oct. 12, 1921, p. 19.

²Note transmitted by M. Briand to Viscount Ishii, August 24, 1921, Minutes, *ibid.*, p. 15.

entirely violated the principles which the German Government itself claims to accept, if they had not taken Polish rights over this district into account." Since, however, the German Government maintained "that separation from Germany is not in accordance with the wishes or interests of the population, the Allied and Associated Powers are disposed to leave the question to be determined by those whom it particularly concerns."²

The final terms of the Treaty of Peace were amended accordingly. Germany renounced in favor of Poland "all rights and title over the portion of Upper Silesia lying beyond the frontier line fixed by the Principal Allied and Associated Powers as the result of the plebiscite" (Art. 88, Treaty of Versailles). German troops and officials were required to evacuate the territory within fifteen days, and it was placed immediately under the authority of an international commission designated by the Allied and Associated Powers and occupied by their troops (Annex to Art. 88). The international commission was charged with the duty of insuring the freedom, fairness and secrecy of the vote, the result of which "will be determined by communes according to the majority of votes in each commune." Section 5 of the annex provides for the fixing of the boundary line as follows:

On the conclusion of the voting, the number of votes cast in each commune will be communicated by the Commission to the Principal Allied and Associated Powers, with a full report as to the taking of the vote and a recommendation as to the line which ought to be adopted as the frontier of Germany in Upper Silesia. In this recommendation regard will be paid to the wishes of the inhabitants as shown by the vote, and to the geographical and economic conditions of the locality.

The plebiscite took place on March 20, 1921, and the results were proclaimed on April 24; but the international commission failed to agree upon and therefore did not recommend a frontier line. The results of the plebiscite are thus summarized in a report of Viscount Ishii to the Council of the League of Nations:

The results of the plebiscite in Upper Silesia were unfortunately not of a nature to allow the frontier line to be drawn according to the wishes of the population, nor did the economic and geographical conditions of the localities give any decisive indications to show how a line should be determined. Indeed, the fact that the two considerations had to be taken into account only complicated the situation.

The plebiscite showed that, taking Upper Silesia as a whole, in certain districts toward the North and West, where the agricultural population is predominant, a great majority of the communes voted for Germany. In other districts, towards the South, where the inhabitants are chiefly of the agricultural and mining classes, the vote of the population was largely in favour of Poland. In an extensive territory in the Centre and East, the voting was of a very confused character. Here are to be found the metallurgical and chemical works and important deposits of coal, zinc and iron. The majority of the communes voted for Poland. Although in the big towns large major-

²Reply to the observations of the German delegation, Minutes, *ibid.*, p. 13.

ities were recorded for Germany, these towns are encircled by the Polish voting communes. It is to be noted that, although in a sense they form a network of their own, they are partly dependent for essential raw materials on outside districts. They are situated near the extreme Eastern limit of Upper Silesia, geographically distant from the bulk of the German voting communes, though the districts which separate them from these communes are not thickly populated.⁴

The report of the international commission was submitted to the Supreme Council, which appointed a committee of experts to undertake further investigations, but this committee was likewise unable to agree upon a frontier line. Its report is thus summarized by M. Briand in his note to Viscount Ishii above referred to:

The Committee reached entire agreement as to the legal interpretation of the Treaty; it was therefore led to reject the solution which favoured the handing over of the territory in its entirety and which considered the results of the vote as a whole. It also gave general indications as to the degree of importance to be assigned to the geographical and economic conditions referred to in the Treaty. On the other hand, it did not succeed in reaching an agreement on a frontier line. In particular difference of opinion was revealed as to the right method of defining and describing the industrial and mining area of Upper Silesia, one delegation isolating in this area an "indivisible triangle" which could be separated from the southern part of the area, and which contained a German majority, another maintaining that the mining and industrial basin formed a single unit and that it was not possible to imagine the separate existence of the "industrial triangle."⁵

The Supreme Council, after fruitless efforts to settle the question by negotiation among its members on Aug. 12, 1921, invited the Council of the League of Nations to recommend the line which the Principal Allied and Associated Powers should lay down. The difficulty was submitted to the League in pursuance of Article 11, paragraph 2 of the Covenant, which declares it "to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends."

The Council accepted the invitation and, as above stated, on October 12, 1921, unanimously recommended the frontier line. The recommendation recited that the Council has made the weighty problem the subject of

⁴Minutes, *ibid.*, p. 9.

According to figures published in *Commerce Reports*, issued by the Bureau of Foreign and Domestic Commerce, Washington, D. C., Nov. 28, 1921, pp. 795 *et seq.*, in the whole plebiscite area 59.6 per cent. of the votes were cast for Germany and 40.4 per cent. for Poland. In the districts of the west and north five-sixths of the votes were for Germany; in the southern districts 70 per cent. of the votes were for Poland, while in the central and eastern area the vote was almost evenly divided, about 52 per cent. falling to Germany and 48 per cent. to Poland.

⁵Minutes, *ibid.*, p. 15.

long deliberations and thorough investigation and has endeavored to interpret faithfully and in an equitable spirit the provisions of the Treaty of Versailles with regard to Upper Silesia. "The Council, being convinced that its duty was above all to endeavour to find a solution in conformity with the wishes of the inhabitants, as expressed by the plebiscite, while taking into account the geographical and economic situation of the various districts, has been led to the conclusion that it is necessary to divide the industrial region of Upper Silesia." But, the Council continued, "owing to the geographical distribution of the population and the mixture of the racial elements, any division of this district must inevitably result in leaving relatively large minorities on both sides of the line and in separating important interests." In order, therefore, to guarantee the continuity of the economic life of the region during the period of readjustment, the Council formulated and recommended draft transitory provisions to be incorporated in a general convention between Germany and Poland relating to railways, water and electric power, monetary system, postal service, customs regime, coal and mine products, employers and workers federations, social insurance, and freedom of movement between the respective zones. It also formulated and recommended draft provisions for the protection of minorities.⁶

The plebiscite area embraces only about 4,100 square miles, with a population in 1919 of 2,060,000, but its rich coal and zinc deposits and highly developed iron and steel industries make the region of great economic importance. The decision of the Allies allots to Poland about 1,300 square miles, but this zone comprises 47 per cent. of the population, three-fourths of the coal production, all of the zinc mines and works, and half of the capacity of steel works. In this area about 510,000 votes were cast, of which about 285,000 were for Poland and 225,000 for Germany.

According to *Commerce Reports*, previously cited, from which these figures are taken, in 1913 the mines in Upper Silesia which are now assigned to Poland produced approximately 32,500,000 tons of coal, and those now assigned to Germany approximately 10,500,000 tons, the output for the whole area being valued at \$75,000,000 annually. The total production of coal in Germany in the same year, excluding Alsace-Lorraine and the Saar Basin, was 174,000,000 tons, of which the production in the territory now assigned to Poland constituted 19 per cent. The pre-war production of coal in the present territory of Poland, exclusive of Upper Silesia, was about 9,000,000 tons, so that the production of Poland will be multiplied about four times by the decision. Since the pre-war consumption amounted to about 18,000,000 tons, it is evident that Poland will now have a considerable surplus of coal for exportation.

The production of pig iron in Upper Silesia in 1913 was 995,000 tons,

⁶Minutes, *ibid.*, p. 16.

valued at about \$15,000,000 and representing about 6 per cent. of the aggregate production of Germany in its then existing boundaries. Approximately all of the iron ore mines lie in territory which has been allotted to Poland. Of the total number of blast furnaces in Upper Silesia immediately preceding the war, twenty-two were in territory now assigned to Poland and fourteen in that assigned to Germany. Of the eight principal iron and steel works, five are now in Polish territory. While the iron and steel production of the Upper Silesian territory which has passed to Poland constitute a comparatively small fraction of the total German output, it represents a very great increase in the Polish iron and steel industries, which, in 1913, had a production of 641,000 tons.

The output of raw zinc of Upper Silesia, amounting to nearly \$20,000,000 per year, in 1912 was 168,600 tons, which represented about five-eighths of the total production of Germany, more than one-sixth of the world production, and was equal roughly to three-fifths of the production of the United States. The value of Upper Silesian production of lead with its by-products amounted before the war to nearly \$3,500,000 per year. Practically the entire zinc and lead industry of Upper Silesia has passed to Poland.

But "while the decision thus allots to Poland decidedly more of the mineral wealth and of the manufacturing industries of Upper Silesia than remain with Germany, the latter retains the great bulk of the agricultural and forest land. Most of the seven-tenths of the plebiscite area allotted to Germany consists of excellent agricultural land or is occupied by valuable forests, which must be considered of great economic importance." In this territory about 675,000 votes were cast, of which about 480,000 were for Germany and 195,000 for Poland.

The new boundary starts at Oderberg in the south and follows the Oder River northwest to a point a little below the city of Ratibor. Thence it proceeds in an approximately straight line toward the northeast to the city of Beuthen, only a few miles from the former Polish border. Leaving that city to Germany, it turns northwest to a point west from the city of Lublinitz, where it turns again toward the northeast until it intersects the Polish border. It thus gives to Poland the southeastern part of the county of Ratibor, the great bulk of Rybnik, a small southeastern corner of the county of Tost-Gleiwitz, and the whole of the county of Pless. In the Industrial District Poland receives the southeastern half of Zabrze (less important industrially than the other half), the whole of Kattowitz, somewhat over half of the county of Beuthen, and the city-county of Königshütte. To the north of the Industrial Triangle, Poland receives much of the greater part of the county of Tarnowitz, a small corner of Tost-Gleiwitz and approximately two-thirds of Lublinitz, including the city of that name. Germany retains the counties of Leobschütz, Neustadt, Kosel, Oppeln, Kreuzburg, Gross Strehlitz, and Rosenberg, and most of Ratibor and Tost-Gleiwitz. The small northwestern section of Rybnik gives her a direct railroad line from Ratibor to Gleiwitz. She retains the industrial cities of Beuthen and Gleiwitz and the northwestern parts of the counties of Beuthen and Zabrze, all of which are of great economic importance.⁷

⁷*Commerce Reports, op. cit.*, p. 796.

The recommendations of the Council of the League of Nations as to the frontier and the general convention between Germany and Poland were approved on October 20 "by the Conference of Ambassadors, acting in the name and by special mandate of the British Empire, France, Italy and Japan, signatories together with the United States of America, as Principal Allied and Associated Powers, of the Treaty of Peace of Versailles," and transmitted on the same day by M. Briand as President of the Conference of Ambassadors, to the Ambassador of Germany and the Minister of Poland at Paris, with the statement that the treaty must be observed in its entirety, and in case either Germany or Poland should refuse to accept all or part of it or place obstacles in the way of its loyal execution, the Allied Powers reserve the right to take any measures to give full effect to their decision.

Pursuant to the recommendations of the Council, the Allied Powers directed the formation of a mixed commission of two Germans and two Poles, natives of Upper Silesia, with a president of some other nationality to be designated by the Council of the League of Nations, to supervise the execution of the transitory economic provisions to be incorporated in the treaty recommended by the Council, and the appointment of an arbitral tribunal to adjust differences of a private nature growing out of the settlement, this tribunal to be composed of three judges, one designated by Germany and one by Poland, and the president by the Council of the League of Nations. The Conference of Ambassadors further decreed that the aforementioned convention be negotiated by a German and Polish plenipotentiary under the presidency of a person to be designated by the Council of the League of Nations, who shall cast the deciding vote in case of disagreement between the parties, and the two governments were required to name their plenipotentiaries within eight days. The decree of the Allies further directed that the mixed commission above provided for be immediately constituted, to cooperate with the inter-Allied commission now administering the territory under the Treaty of Versailles, in the adoption of preparatory measures for the transition from the present state to the new régime.

The decision of the Allied Powers finally provided that as soon as they shall decide that the boundary commission provided for in the recommendation of the Council has sufficiently delimited the frontier on the spot and the general convention has been negotiated, the plebiscite commission shall give to the German and Polish Governments notification that they are free to take over the administration of the territories respectively allotted to them in accordance with Section 6 of the annex to Article 88 of the Treaty of Versailles.⁸

GEORGE A. FINCH.

⁸*L'Europe Nouvelle*, Oct. 29, 1921, pp. 1404-1408; and Monthly Summary of the League of Nations, Nov. 1921, p. 157.

CURRENT NOTE

AN ARBITRATION WITH NORWAY

A return to normalcy in the international world means a return to the judicial settlement of international disputes. Many events since the war testify to the fact that the trend of the times is in this direction, and it has been gratifying to observe that the United States, true to tradition, has been no disinterested bystander in the work of re-establishing the machinery of international law. It is quite proper that we should note with pride that the first president elected since the war to preside over an international tribunal constituted under the Hague Conventions was Mr. Elihu Root,¹ and especially that the plan for the Permanent Court of International Justice finally adopted by the League of Nations was very largely the work of this same distinguished American. But in rendering such services Mr. Root has been acting in a purely personal capacity, and while reflecting undoubted credit upon our country it is nevertheless a fact that his acts have not borne the stamp of official government sanction. Meanwhile abroad, and not a little at home, America's rejection of the League of Nations' Covenant has been the source of a certain scepticism or misunderstanding over the real position of America toward the world problem of reconciliation. To such criticisms our most valid appeal must be to the facts, and under this test events are again occurring which should convey to the world the assurance that the United States, both by word and in action, continues to look to the way of international arbitration as affording the surest road toward international understanding. Highly significant in this connection has been the recent reopening of the sessions of the British-American Claims Commission which, in pursuance of the treaty with Great Britain of August 18, 1910, had only commenced its work when the war suddenly interrupted its activities. And to this there may now be added an act carrying with it an even broader significance. An agreement between the United States and Norway² was signed on June 30, 1921, ratifications being exchanged at Washington on August 22, 1921, whereby the two countries have agreed to arbitrate certain important claims arising from the war.

According to the preamble to this agreement with Norway the purpose of the arbitration is "to settle amicably certain claims of Norwegian

¹Case of the Expropriated Religious Properties in Portugal, Awards of Sept. 2-4, 1920.

²The treaty will be found printed in the Supplement to this JOURNAL, p. 16.

subjects against the United States arising, according to contentions of the Government of Norway, out of certain requisitions by the United States Shipping Board Emergency Fleet Corporation." The outstanding facts in the case may be briefly summarized; in a general way they are largely familiar to the public, in view of the many similar claims on the part of American citizens which have been referred to the Shipping Board and which are also being prosecuted before the Court of Claims. On August 3, 1917, the Shipping Board, pursuant to powers delegated under Act of Congress approved June 15, 1917, issued sweeping requisition orders to all shipbuilding yards of the country commandeering in the name of the Government all ships under construction having a capacity of over 2500 tons deadweight, and all materials pertaining thereto. American shipbuilders at that time were engaged in building many ships for foreign account, and the Norwegian claims which are the subject of the present arbitration grow out of contracts for the construction of fifteen ships, which by virtue of various assignments, some before and some after August 3, the date of the Government requisition, came eventually into the hands of Norwegian subjects. Nine of the fifteen vessels concerned were to be built in the yards of American companies whose stock was principally, if not entirely, owned by a Norwegian subject largely interested at the time in promoting shipbuilding construction in the United States, and these vessels were originally contracted for by other American companies which were also controlled by the same Norwegian subject. When the requisition became effective the keels of only two of these fifteen contracted ships had actually been laid in the yards, and a portion of the material delivered on one other. The Government took possession of the ships under construction, as well as of all material delivered on the contracts, and, the shipyards being henceforth held exclusively to government work by virtue of the war necessities of the United States, it became impossible for them to execute the contracts in which the Norwegian subjects were concerned.

The Act of June 15, 1917 had provided that the United States should pay "just compensation" in return for the requisitions made in pursuance thereof, and the Shipping Board became charged with the settlement of such claims. The Board was generally successful in concluding settlements but the case of the "Christiania Group of Norwegian Ship Owners" (the fifteen claimants in the present arbitration had combined under this title) proved an exception. This group sought to recover before the Board a total sum of \$14,157,977.58, allegedly calculated upon the basis of original cost to the ultimate contract owners, plus additional expenses, plus interest. Such a method of calculation was entirely unacceptable to the Shipping Board. \$2,381,635.00 had been paid to the builders as progress payments on these contracts, and, of course, to this sum a just claim might be established, but on the other hand the actual

material in the yards represented by these contracts (two ships under construction and part material delivered on one additional), and which was the only property acquired by the United States under the requisition, was estimated to be worth only \$623,760.00. The amount claimed by the Norwegians stood at best for the highly speculative value that shipping contracts had obtained on the open market due to the shipping crisis prevailing under the pressure of the submarine warfare. The Norwegian claimants assert that they bought these contracts at great increases in price, and they contend that these high rates were justified under the abnormal circumstances.

Direct negotiations with the Shipping Board having proved fruitless, the matter was taken up diplomatically through the Norwegian Minister at Washington and the outcome was the decision to submit the claims to arbitration. The treaty provides for an Arbitral Tribunal to be constituted very much as prescribed by the Hague Convention of 1907 in the case of Summary Procedure. Each Government appoints one arbitrator and the third who is to preside over the Tribunal will be named by the President of the Swiss Confederation,—the two countries not having mutually come to a decision upon the third member when the first month elapsed as allowed by the treaty. The American and Norwegian members have already been announced. Mr. Chandler P. Anderson, well known to international law circles for his many previous services in international arbitrations, and particularly as Agent for the United States in the North Atlantic Coast Fisheries Arbitration at The Hague in 1910, as Counsel for the Government of Costa Rica in the Panama-Costa Rica Boundary Arbitration before Chief Justice White in 1913-14, and most recently as Arbitrator on the British-American Pecuniary Claims Arbitration Commission, has been named by the United States. Norway has likewise chosen an eminent representative of her country in the person of His Excellency Paul Benjamin Vogt, the present Ambassador of that country at the Court of St. James.

To act as Agent the United States has named Mr. William C. Dennis of Washington, formerly Assistant Solicitor of the Department of State, Agent of the United States in the Orinoco Steamship Company Arbitration at The Hague in 1910, and in the Chamizal Arbitration with Mexico at El Paso, Texas, in 1911. Mr. Dennis' latest public services in international law have been as Legal Adviser to the Chinese Government at Peking during the war, and as Solicitor to the American Delegation to the Preliminary Conference on International Communications held in Washington in the fall of 1920. The Norwegian Agent is Captain C. Frolich Hanssen, a distinguished artillery officer of the Royal Norwegian Army, and a practical expert both in the construction and operation of ships. Through long association in America with the shipping interests of the Norwegian claimants, and having represented these claimants before the

United States Shipping Board in 1919, and having served as a member of the Norwegian Technical Commission which participated in the negotiation of the Special Agreement of June 30, 1921, Captain Hanssen possesses an intimate knowledge of the matters involved in the arbitration.

According to the treaty the Tribunal would meet at The Hague June 22nd next, but by mutual agreement a postponement of one month has been adopted, thus fixing the opening date as July 22, 1922.

It is undoubted that an arbitration of such importance is destined to occasion much interest and publicity. The amount of money involved is enough to assure this. But apart from the pecuniary interests at stake there are several important legal questions awaiting decision which are likely to establish significant precedents in international law. This will be the first important arbitration to have direct bearing upon the war. By the treaty the Tribunal is to reach its decision "in accordance with the principles of law and equity." War was the cause, but normalcy returns again to appeal in the name of "law and equity."

STANLEY P. SMITH.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD SEPTEMBER 1—DECEMBER 15, 1921.

(With references to earlier events not previously noted.)

WITH REFERENCES

Abbreviations: *Adv. of peace*, Advocate of peace; *Bundesbl.*, Switzerland, Bundesblatt; *Chunet*, Journal du droit international; *Cmd.*, Great Britain, Parliamentary papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Contemp. R.*, Contemporary Review; *Costa Rica, Ga.*, La Gaceta; *Covenant*, The Covenant (London); *Cur. Hist.*, Current History (New York Times); *Daily digest*, Daily digest of reconstruction news; *D. G.*, Diário do Governo (Portugal); *D. O.*, Diário oficial (Brasil); *Deutsch. Reichs.*, Deutscher Reichsanzeiger; *E. G.*, Eidgenössische gesetzblatt (Switzerland); *Edin. Rev.*, Edinburgh Review; *Evening Star* (Washington); *Figaro*, Le Figaro (Paris); *G. B. Treaty series*, Great Britain, Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gazzetta Ufficiale (Italy); *Guatemalteco*, El Guatemalteco; *I. L. O. B.*, International Labor Office Bulletin; *J. O.*, Journal officiel (France); *L. N. O. J.*, League of Nations, Official Journal; *L. N. T. S.*, League of Nations, Treaty series; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation*, (N. Y.); *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan-American Union Bulletin; *Press Notice*, U. S. State Dept. Press Notice; *Proclamation*, U. S. State Dept. Proclamation; *Rev. int. de la Croix-Rouge*, Revue internationale de la Croix-Rouge; *Staats*, Netherlands Staatsblad; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

March, 1921.

- 21 UNITED STATES—VENEZUELA. Treaty for advancement of peace, signed at Caracas March 21, 1914, and ratified on Feb. 22, 1921, was proclaimed by President Harding. *U. S. Treaty series*, No. 652.

May, 1921.

- 27 to Sept. 10. SWEDEN—SWITZERLAND. Agreement concerning insane persons effected by exchange of notes. Text: *E. G.*, Nov. 16, 1921, p. 789.

June, 1921.

- 25 GERMANY—GREAT BRITAIN. Treaty signed in London, Dec. 31, 1920, for execution of section IV of article V of Treaty of Versailles, promulgated by Germany. Text: *Reichs. G.*, July 4, 1921, p. 777.
- 29 ALLIED POWERS—GERMANY. Agreement concerning frontier lines in Saar Basin, signed at Paris, Dec. 16, 1920, promulgated by Germany. Text: *Reichs. G.*, July 12, 1921, p. 809.

July, 1921.

- 1 FRANCE—GREAT BRITAIN. Convention, signed July 1, 1861, relative to emigration of laborers from India to French colonies, denounced by Great Britain, effective Jan. 1, 1923. *Lond. Ga.*, Oct. 18, 1921, p. 8189.
- 8 GREAT BRITAIN—SWEDEN. Agreement signed at Stockholm relative to suppression of capitulations in Egypt. *G. B. Treaty series*, 1921, No. 14. Cmd. 1391.
- 12 FRANCE—GERMANY. Convention signed June 30, 1920, relative to war levies on Alsace-Lorraine, ratified by Germany. Text: *Reichs. G.*, July 12, 1921, p. 812. Ratifications exchanged July 23, 1921. *Reichs. G.*, Aug. 2, 1921, p. 958.
- 12 POLAND—ROUMANIA. Political agreement of March 3, 1921, ratified by Polish Diet. Text: *Temps*, July 22, 1921, p. 2.
- 19 GERMANY—POLAND. Treaty signed at Berlin, Feb. 12, 1921, supplementing treaty of Oct. 1, 1919, concerning interned persons, came into force. Text: *Reichs. G.*, July 19, 1921, p. 921.
- 20 BOLIVIA—GERMANY. Treaty signed at La Paz renewing friendly relations. *P. A. U.*, Dec., 1921, p. 625.

August, 1921.

- 1 BRAZIL—URUGUAY. Convention signed for promoting exchange of professors and students. *P. A. U.*, Nov., 1921, p. 511.
- 6 BELGIUM—GERMANY. Convention of July 9, 1920 relative to execution of art. 312 of Treaty of Versailles, promulgated in Germany. Text: *Reichs. G.*, Aug. 6, 1921, p. 1177.
- 6 DANZIG—GERMANY—POLAND. Convention signed at Paris, April 21, 1921, for freedom of transit through East Prussia, promulgated in Germany. *Reichs. G.*, Aug. 6, 1921, p. 1069.
- 8 BELGIUM—GREAT BRITAIN. Agreement, regarding mutual settlement of questions arising out of sequestration of property, came into force. Text: *Monit.*, Sept. 16 1921, p. 7742. *London Ga.*, Nov. 15, 1921, p. 9032.
- 13 AFGHANISTAN—SOVIET RUSSIA. Exchange of ratifications of treaty of Feb. 28, 1921 took place at Kabul. *Russian information*, Dec. 15, 1921, p. 137.
- 15 CHILE—SWEDEN. Arbitration treaty, ratified May 3, 1921, promulgated in Chile. *P. A. U.*, Jan., 1922, p. 86.
- 22-24 INTERNATIONAL CONGRESS AGAINST ALCOHOLISM. Sixteenth meeting held at Lausanne with 29 countries represented. *Mouvement pacifiste*, Aug.-Oct. 1921, p. 82.

- 24 NORWAY—UNITED STATES. Agreement for submission to arbitration of certain claims of Norwegian subjects, signed at Washington, June 30, 1921, proclaimed by President Harding. *U. S. Treaty series*, No. 654.
- 25 JAPAN—PARAGUAY. Ratifications of treaty of commerce signed at Asunción, Nov. 17, 1919, exchanged at Santiago. *P. A. U.*, Jan. 1922, p. 86.
- 25 to Sept. 15. PAN AMERICAN POSTAL CONGRESS. Held session in Buenos Aires, reaching agreements on parcel post, effective Jan. 1, 1923, and postal rates to Latin America. *N. Y. Times*, Sept. 12, 1921, p. 2, and Sept. 14, 1921, p. 32.
- 26 FAR EASTERN REPUBLIC—JAPAN. Negotiations began at Dairen in connection with evacuation of Japanese troops from the coast line and establishment of economic relations. *Russian information*, Dec. 15, 1921, p. 138.
- 27 FRANCE—GERMANY. Reparations agreement providing for payment in kind by Germany to France, signed at Wiesbaden. *Cur. Hist.*, Oct., 1921, 15:154.
- 27 to Sept. 9. GREAT BRITAIN—GREECE. Agreement signed at Athens respecting British war graves in Greece. *G. B. Treaty series*, 1921, No. 24. Cmd. 1554.
- 30 GERMANY—SOVIET RUSSIA. Ratifications exchanged at Berlin of the supplementary agreement of May 6, 1921, for the exchange of prisoners of war and interned persons. *Reichs. G.*, Sept. 16, 1921, p. 1261.
- 30 to Oct. 12. LEAGUE OF NATIONS. COUNCIL. 14th regular meeting held in Geneva. During same period extraordinary sessions were held for discussion of Silesian question. *L. N. M. S.*, Nov., 1921, p. 149.

September, 1921.

- 1 ANGLO-HUNGARIAN MIXED ARBITRAL TRIBUNAL. Established in London. *Board of trade j.*, Sept. 8, 1921, p. 242.
- 1 INTERNATIONAL ZIONIST CONFERENCE. Opened at Carlsbad. *Evening Star*, Sept. 2, 1921, p. 12.
- 1-6 PAN AFRICAN CONGRESS. Biennial meeting held in Paris, continuing the meeting held in Brussels on Aug. 31. *N. Y. Times*, Sept. 6, 1921, p. 16; *Clunet*, May-Oct., 1921, p. 641.
- 1 SIAM—UNITED STATES. Commercial treaty of Dec. 16, 1920, ratified by Siam. *Wash. Post*, Sept. 4, 1921, II, 4
- 2 NORWAY—SOVIET RUSSIA. Preliminary trade agreement signed at Christiania. Text: *Soviet Russia*, Nov., 1921, p. 223.

- 3 INTERNATIONAL LAW ASSOCIATION. Closed 30th session at the Hague, after approving the "Hague Rules, 1921" governing maritime commerce, drawn up by its Maritime Law Committee. Text of Hague rules: *Rev. de droit int.*, 1921, ser. 3, 2:471.
- 3 MEXICAN OIL QUESTION. Agreement reached between Mexican government and five American petroleum companies. *Wash. Post*, Sept. 5, 1921, p. 2; *Cur. Hist.*, Oct., 1921, 15:170.
- 5 COSTA RICA—PANAMA. Panama evacuated disputed territory on Sept. 5, and Costa Rica took peaceful possession. *Cur. Hist.*, Oct., 1921, 15:174.
- 5 to Oct. 6. LEAGUE OF NATIONS. ASSEMBLY. Second plenary conference held in Geneva. Agenda included disarmament problems, election of judges to Permanent Court of International Justice, amendments to covenant, international disputes, new members, finances, etc. *Cur. Hist.*, Nov., 1921, 15:270.
- 7-27 GREAT BRITAIN—SOVIET RUSSIA. Curzon's note regarding alleged violation of trade agreement of March 16, 1921, sent to Soviet Foreign Office. Text (in part): *Times*, Sept. 21, 1921, p. 12. Litvinoff replied on Sept. 27. Summary: *Times*, Oct. 8, 1921, p. 7. Text: *Soviet Russia*, Dec., 1921, p. 261. Rejoinder sent on Nov. 12, to Litvinoff's note of Sept. 27. *Times*, Nov. 17, 1921, p. 9.
- 7 to Oct. 19. SHANTUNG QUESTION. Japan sent proposal to China on Sept. 7. China replied on Oct. 5. Text: *Europe*, Nov. 26, 1921, p. 1534. *Adv. of peace*, Oct., 1921, p. 339. Japan replied on Oct. 19. Text: *Europe*, Nov. 5, 1921, p. 1439.
- 8 FAR EASTERN REPUBLIC. Request for representation at Armaments conference transmitted to Secretary Hughes. Text: *Nation* (N. Y.), Oct. 26, 1921, p. 485.
- 9 FRANCE—GREECE. Treaty for execution of paragraph "f" of art. 296 of Treaty of Versailles, signed Aug. 27, 1921, promulgated in France. Text: *J. O.*, Sept. 15, 1921, p. 10646.
- 10 CENTRAL AMERICAN REPUBLIC. Constitution signed at Tegucigalpa, Honduras, by representatives of Guatemala, Honduras, and Salvador. *Cur. Hist.*, Oct., 1921, 15:173; *Guatemalteco*, Sept. 29, 1921, No. 10, p. 61.
- 10-20 PAN AMERICAN STUDENTS CONFERENCE. Held in Guatemala City. *P. A. U.*, Jan., 1922, p. 57.
- 10 POLAND—SOVIET RUSSIA. Chicherin sent notes to Poland, on Sept. 10 and 22 protesting against Polish encouragement to Russian counter-revolution. Text: *Soviet Russia*, Nov., 1921, p. 212.
- 20 BRITISH—BULGARIAN MIXED ARBITRAL TRIBUNAL. Established in London. *London Ga.*, Sept. 20, 1921, p. 7383.

- 20 ECUADOR—VENEZUELA. Arbitration treaty, signed in Quito on May 22, 1921, ratified by Ecuador. *P. A. U.*, Jan., 1922, p. 86.
- 21 GREAT BRITAIN—SWEDEN. Agreement concluded by exchange of notes for reciprocal notification of particulars regarding lunatic nationals in each country. Text: *London Ga.*, Oct. 4, 1921, p. 7758.
- 21 INTERNATIONAL CONGRESS OF STUDENTS. Met at Mexico City. *P. A. U.*, Dec., 1921, p. 546.
- 22 BRAZIL—GREAT BRITAIN. Ratifications exchanged at Rio de Janeiro of agreement for exchange of money orders, signed March 1, 1921. *G. B. Treaty series*, 1921, No. 25. Cmd. 1562.
- 22 LEAGUE OF NATIONS. Latvia, Esthonia and Lithuania admitted to membership, bringing total membership to 51 nations. *N. Y. Times*, Sept. 23, 1921, p. 17.; *L. N. M. S.*, Nov., 1921, p. 121.
- 23 (?) DENMARK—NORWAY. Agreement regulating air traffic signed. *Times*, Sept. 26, 1921, p. 9.
- 24 INTERNATIONAL ASSOCIATION OF JOURNALISTS. Formed at Geneva, to defend and sustain the interests of its members in their relations with the League of Nations, and with the states, members of the League. *Clunet*, May-Oct., 1921, p. 645.
- 24 ITALY—SWITZERLAND. Agreement signed at Berne concerning the St. Gothard tunnel. French and German texts: *E. G.*, Oct. 12, 1921, p. 704.
- 26 to Oct. 13. CAUCASIAN REPUBLICS CONFERENCE. Opened at Kars on Sept. 26 with representatives from Georgia, Armenia, Azerbaijan, Russia, and Turkey. Closed on Oct. 18, after signing treaty regulating contentious questions between Turkey and the Caucasian Republics. *Russian information*, Dec. 15, 1921, p. 136.
- 26 FRANCE—NORWAY. Norway ratified treaty of commerce of April 23, 1921. *Temps*, Sept. 28, 1921, p. 1.
- 29 GREAT BRITAIN—PORTUGAL. Ratifications exchanged at Lisbon of treaty relating to capitulations in Egypt. *G. B. Treaty series*, 1921, No. 23, Cmd. 1553.
- 29 GREAT BRITAIN—PORTUGAL. Ratifications exchanged of treaty relating to extradition of fugitive criminals between the Federated Malay State and Portuguese territories. *G. B. Treaty series*, 1921, No. 21. Cmd. 1549.
- 29 GREAT BRITAIN—PORTUGAL. Ratifications exchanged at Lisbon of treaty relating to extradition of fugitive criminals between British protectorates and Portuguese territories. *G. B. Treaty series*, 1921, No. 22. Cmd. 1550.
- 29 LITHUANIA—SWEDEN. Sweden recognized the *de jure* government of Lithuania. *Cur. Hist.*, Nov., 1921, 15:351.

- 30 BELGIUM—GREAT BRITAIN. Ratifications exchanged of convention relative to art. 296 of the Treaty of Versailles (enemy debts) signed at London, July 20, 1921. *G. B. Treaty series*, 1921, No. 19. Cmd. 1543. Promulgated in Belgium, Oct. 13, 1921. Text: *Monit.*, Nov. 10, 1921, p. 9994.
- 30 FRANCE—GREAT BRITAIN. Ratifications exchanged of convention relative to art. 296 of the Treaty of Versailles (enemy debts) signed at London, July 20, 1921. *G. B. Treaty ser.*, 1921, No. 18. Cmd. 1542.
- 30 WHITE SLAVE TRADE. Draft convention presented by Fifth Committee of League of Nations, approved by the Assembly. *L. N. M. S.*, Dec., 1921, p. 185.

October, 1921.

- 1 CENTRAL AMERICAN REPUBLIC. The constitution signed at Tegucigalpa on Sept. 9, 1921, became effective Oct. 1, 1921. *Commerce repts.*, Nov. 14, 1921, p. 652. Provisional Federal Council took charge of affairs at Tegucigalpa, the capital, on Oct. 10. *Cur. Hist.*, Nov., 1921, 15:361.
- 1 HELIGOLAND. Inter-allied commission finished main work of demolition of ancient fortress. *Times*, Oct. 15, 1921, p. 10.
- 1 NORWAY—SOVIET RUSSIA. Commercial treaty, signed Sept. 2, 1921, ratified by Norway. *Temps*, Oct. 2, 1921, p. 1.
- 2 SOVIET RUSSIA—TURKEY. Ratification of peace treaty of Mar. 16, 1921 took place at Kars. *Temps*, Oct. 5, 1921, p. 2.
- 3-10 INSTITUTE OF INTERNATIONAL LAW. Meeting held in Rome. Grenoble, August, 1922, next meeting place. M. Andre Weiss of Institut de France named president. *Temps*, Oct. 12, 1921, p. 2. *R. de droit int.*, 1921, ser. 3, 2:488.
- 3 ? NORWAY—POLAND. Commercial treaty concluded on the basis of the most-favored nation treatment. *Temps*, Oct. 6, 1921, p. 2.
- 4-9 PERMANENT MANDATES COMMISSION. Held first session in Geneva. *L. N. M. S.*, Nov., 1921, p. 158.
- 5 GREAT BRITAIN—UNITED STATES. Decision became effective to extend and apply to Hawaiian Islands the provisions of the convention signed at Washington, Mar. 2, 1899, relative to disposal of real and personal property. *Lond. Ga.*, Nov. 22, 1921, p. 9245.
- 5 POLAND—SOVIET RUSSIA. Agreement signed by which Russia will return to Poland certain art objects and other material belonging to Poland, and pay money due Poland under the treaty. *Temps*, Oct. 9, 1921, p. 2.
- 6 GERMANY—GREAT BRITAIN. Ratifications exchanged at London of amended agreement of Dec. 31, 1920 respecting art. 297 of Treaty of Versailles (property, rights and interests). *G. B. Treaty series*, 1921, No. 26. Cmd. 1563.

- 7 FRANCE—GERMANY. Supplementary reparations agreement signed at Wiesbaden. Text: *Europe*, Oct. 29, 1921, p. 1411.
- 8 AUSTRIA—UNITED STATES. Peace treaty signed at Vienna, Aug. 24, 1921, ratified by Austria. *U. S. Treaty series*, No. 659.
- 8 PHILIPPINE COMMISSION. Wood-Forbes report on political status of Philippine Islands sent to President Harding. Text: *Cur. Hist.*, Jan., 1922, 15:678.
- 10 to Nov. 18. AALAND ISLANDS. Conference on neutralization and non-fortification of Islands met in Geneva on Oct. 10. *L. N. M. S.*, Nov., 1921, p. 163. Convention signed on Oct. 20, by representatives of Denmark, Esthonia, Finland, France, Germany, Great Britain, Italy, Latvia, Poland and Sweden. *Temps*, Oct. 23, 1921, p. 6. Text: *Europe*, Nov. 12, 1921, p. 1471. Convention ratified by Sweden, on Nov. 18. *L. N. M. S.*, Dec., 1921, p. 180.
- 10 PANAMA CANAL TOLLS. Senate passed bill exempting American coast-wise vessels from tolls by vote of 47 to 37. *Cur. Hist.*, Nov., 1921, 15:362; *Cong. Rec.*, Oct. 10, 1921, p. 6916.
- 11 FRANCE—PERU. Permanent Court of Arbitration decided that Peru should pay 25,000,000 francs in settlement of French claims. *N. Y. Times*, Oct. 12, 1921, p. 32.
- 12 SIAM—UNITED STATES. Treaty and protocol revising existing treaties signed at Washington, Dec. 16, 1920, proclaimed by President Harding. *U. S. Treaty series*, No. 655.
- 12-27 UPPER SILESIA. Award of League of Nations sent to M. Briand on Oct. 12. M. Briand forwarded it to Germany and Poland on Oct. 20. Text: *Europe*, Oct. 29, 1921, p. 1404. *Cur. Hist.*, Dec. 1921, 15:501. Poland accepted decision on Oct. 25 and Germany on Oct. 26. *N. Y. Times*, Oct. 28, 1921, p. 10.
- 13 NAKHITCHEVAN. Newly created state placed under protection of Azerbaijan by treaty of Oct. 13, between Azerbaijan and Turkey. *Cur. Hist.*, Jan., 1922, 15:665.
- 14 HUNGARY—RUMANIA. Agreement concluded for an exchange of political prisoners. *Temps*, Oct. 16, 1921, p. 2.
- 16 FINLAND—LITHUANIA. Finland recognized the government *de jure* of Lithuania. *Temps*, Oct. 17, 1921, p. 1.
- 17 AFGHANISTAN—PERSIA. Text of treaty of commerce and friendship made public at Teheran. *Temps*, Oct. 18, 1921, p. 4.
- 18 HUNGARY—UNITED STATES. United States Senate consented to ratification of Peace Treaty. *Cong. Rec.*, Oct. 18, 1921, p. 7195.
- 19 PORTUGAL. Revolution took place in Lisbon. *Cur. Hist.*, Dec., 1921, 15:513.

- 20 to Nov. 18. FRANCE—TURKEY. Political and economic agreement signed at Angora. Text: *Europe*, Nov. 5, 1921, p. 1437. *Cur. Hist.*, Jan., 1922, 15:661. Cmd. 1556. Ratified by Angora Assembly on Oct. 22. *Wash. Post*, Oct. 24, 1921, p. 5. Ratified by France on Oct. 30. *N. Y. Times*, Oct. 31, 1921, p. 17. *Temps*, Oct. 24, 1921, p. 2. Official statement issued by British Embassy in Paris on Nov. 6, regarding Angora agreement. *Times*, Nov. 12, 1921, p. 10. French reply to British note of Nov. 6 received in London on Nov. 18. Summary: *Times*, Nov. 19, 1921, p. 7.
- 21 ARGENTINA—GREAT BRITAIN. Great Britain denounced parcel post agreement of June 10, 1884, effective Feb. 17, 1922. *Lond. Ga.*, Oct. 21, 1921, p. 8291.
- 21 GREAT BRITAIN—UNITED STATES. Treaty signed enabling Canada to adhere to convention as to tenure and disposition of real and personal property, concluded between United States and Great Britain March 2, 1899. Text: *Cong. Rec.*, Nov. 9, 1921, p. 8460.
- 22 HUNGARY. Ex-emperor Charles made second attempt to regain throne, which resulted in his exile on Nov. 3 to the Island of Madeira. *Cur. Hist.*, Dec., 1921, 15:509.
- 24 CHINA—SOVIET RUSSIA. Chinese consul in Moscow informed Soviet government that China was prepared to give formal recognition to the Russian trade delegation. *Russian information*, Dec. 15, 1921, p. 137.
- 24 CZECHOSLOVAK REPUBLIC—POLAND. A commercial treaty was signed at Warsaw based on the principle of the most-favored nation treatment. *Temps*, Oct., 26, 1921, p. 2.
- 25 DANZIG—POLAND. Treaty covering political and economic relations signed at Warsaw. *Times*, Oct. 27, 1921, p. 9. *L. N. M. S.*, Dec. 1921, p. 181.
- 25 FRANCO-HUNGARIAN MIXED ARBITRAL TRIBUNAL. Announced rules of procedure. *J. O.*, Oct. 30, 1921, p. 12222.
- 25 to Nov. 19. INTERNATIONAL LABOR CONFERENCE. Third annual session in Geneva resulted in 15 agreements for improvement of conditions of work, which took form in draft conventions or recommendations. Summary of conventions and recommendations: *Times*, Nov. 24, 1921, p. 9; *I. L. O. B.*, Nov. 2-Nov. 30, 1921.
- 28 BELGIUM—FRANCE. Convention relating to military service signed at Paris, Oct. 4, 1921, promulgated in France. Text: *J. O.*, Nov. 6, 1921, p. 12408.
- 28 GREAT BRITAIN—SOVIET RUSSIA. Note sent by Chicherin to British government on subject of Russia's foreign indebtedness. Text: *Europe*, Nov. 5, 1921, p. 1438. British reply, Nov. 1, 1921. Text: *Times*, Nov. 3, 1921, p. 9.

- 28 **SOVIET RUSSIA.** Renewed proposals of peace and cooperation to Great Britain, France, Italy, Japan and the United States and agreed to recognize, under certain conditions, the foreign debts of the Tsarist government prior to 1914. *N. Y. Times*, Oct. 30, 1921, p. 1. Text: *Soviet Russia*, Dec., 1921, p. 260.
- 29 **ESTHONIA—FINLAND.** A commercial treaty signed [at Helsingfors]. *Temps*, Oct. 31, 1921, p. 1.
- 30 **GREAT BRITAIN—HUNGARY.** Great Britain notified Hungary of revival from date of notice, of Treaty of Dec. 3, 1873 signed at Vienna, for mutual surrender of fugitive criminals, and Declaration signed at London, June 26, 1901 amending above treaty. *London Ga.*, Dec. 6, 1921, p. 9887.
- 31 **CHINA—UNITED STATES.** Note sent to Peking government by Secretary Hughes calling attention to China's financial obligations. *N. Y. Times*, Nov. 7, 1921, p. 1.
- 31 **ECONOMIC CONFERENCE AT RIGA.** Representatives of Finland, Esthonia, Latvia, Lithuania and Soviet Russia reached basis for agreements on transport questions. *Cur. Hist.*, Jan., 1922, 15:674; *Times*, Nov. 5, 1921, p. 9.
- 31 **PORTUGAL—UNITED STATES.** Arbitration treaty signed at Lisbon, Sept. 14, 1920, proclaimed by President Harding. *U. S. Treaty series*, No. 656.

November, 1921.

- 4 ? **DENMARK—NORWAY.** Norway informed Denmark that it could not recognize extension of Danish sovereignty to the whole of Greenland, as announced by Danish Foreign office in May, 1921. *Times*, Nov. 5, 1921, p. 9.
- 4 **SLAVE TRADE.** Treaties of 1839 with Argentina, Uruguay and Venezuela denounced by Great Britain, effective from Aug. 13, 1921. *Lond. Ga.*, Nov. 4, 1921, p. 8719.
- 5 **MONGOLIA—SOVIET RUSSIA.** Treaty signed at Moscow forbidding the harboring of counter revolutionary activities, and including most-favored nation clauses. Summary: *Nation*, N. Y., Jan. 4, 1922, p. 28.
- 6 **CZECHOSLOVAK REPUBLIC—POLAND.** Treaty signed [at Prague] settling questions of neutrality and making no territorial modification. *Temps*, Nov. 9, 1921, p. 2; Summary: *Times*, Nov. 11, 1921, p. 9; ——— *Temps*, Nov. 12, 1921, p. 2.
- 7 **CHINA—UNITED STATES.** Tariff treaty of Oct. 20, 1920 proclaimed. *U. S. Treaty series*, No. 657.

- 8 AUSTRIA—UNITED STATES. Exchange of ratifications of peace treaty took place in Vienna. Proclaimed by President Harding Nov. 17, 1921. *U. S. Treaty series*, No. 659.
- 8 FRANCE—GREAT BRITAIN. Promulgation made by France of convention, signed at London, July 20, 1921, relative to art. 296 of Treaty of Versailles (enemy debts). Text of treaty: *J. O.*, Nov. 10, 1921, p. 12486.
- 10 CZECHOSLOVAK REPUBLIC—RUMANIA. Commercial treaty of April 23, 1921 came into force. *Bd. of trade j.*, Dec. 29, 1921, p. 682.
- 10 FRANCE—ITALY. French government denounced its commercial agreements with Italy, ending February, 1922. *Times*, Nov. 11, 1921, p. 9; *Commerce repts.*, Dec. 19, 1921, p. 981.
- 10 FRANCE—SPAIN. France cancelled *modus vivendi* of Dec. 30, 1893, under which certain Spanish products have enjoyed a special tariff since 1906. *Ga. de Madrid*, Nov. 13, 1921, p. 516; *Commerce repts.*, Dec. 19, 1921, p. 981.
- 11 GERMANY—UNITED STATES. Ratifications of peace treaty signed Aug. 25, 1921, exchanged in Berlin. Proclaimed by President Harding Nov. 14, 1921. *U. S. Treaty series*, No. 658.
- 12 CONFERENCE ON LIMITATION OF ARMAMENT. Opened in Washington Nov. 12 with delegations from the United States, Great Britain, France, Italy, Japan, China, Holland, Belgium and Portugal. President Harding made an address and Secretary Hughes presented American naval proposals. Text: *Cur. Hist.*, Dec., 1921, p. I.
- 15 CONFERENCE ON LIMITATION OF ARMAMENT. Held second plenary session for announcement of approval of American naval proposals by Great Britain, Japan, France and Italy. *Cur. Hist.*, Dec., 1921, p. XVIII.
- 15 INTERNATIONAL AERONAUTICAL CONGRESS. Opened at Paris, with 500 delegates in attendance. *Times*, Nov. 16, 1921, p. 13.
- 16 INTERNATIONAL SANITARY CONGRESS, PARIS. Adjourned after drafting convention providing that plague, yellow fever, cholera, small-pox and influenza epidemics be included among so-called international notifiable diseases. *Wash. Post*, Dec. 5, 1921, p. 6.
- 16-19 LEAGUE OF NATIONS. COUNCIL. 15th session held in Paris. *L. N. M. S.*, Dec., 1921, p. 167.
- 18 ALBANIA—SERB, CROAT, SLOVENE STATE. Resolution on boundary dispute adopted by Council of League at Paris, when representatives of the two nations, summoned before the Council, agreed to accept boundary decision of the Council of Ambassadors of Nov. 9, subject to certain reservations. *Cur. Hist.*, Dec., 1921, 15:511; *L. N. M. S.*, Dec., 1921, p. 174.

- 18 GREAT BRITAIN—MESOPOTAMIA. Council of League of Nations notified of conclusion of treaty between new monarchy of King Feisal (Iraq) and the British Empire. *Cur. Hist.*, Jan., 1922, 15:674.
- 19 CZECHOSLOVAK REPUBLIC—SPAIN. Commercial agreement concluded by exchange of notes of Sept. 16, Oct. 26 and Nov. 19, 1921. Summary: *Board of trade j.*, Dec. 15, 1921, p. 633; *Ga. de Madrid*, Nov. 25, 1921, p. 642.
- 21 CONFERENCE ON LIMITATION OF ARMAMENT. Held third plenary session for discussion of attitude of France in respect to size of her army. Text of speeches: *Cur. Hist.*, Dec., 1921, p. XXXV.
- 22 AFGHANISTAN—GREAT BRITAIN. Treaty of friendship recognizing full independence of Afghanistan signed at Kabul. Summary: *Times*, Nov. 24, 1921, p. 10; *Cur. Hist.*, Jan., 1922, 15:664.
- 24 JAPAN. Crown Prince Hirohito made regent in place of his father, Emperor Yoshihito. *Wash. Post*, Nov. 26, 1921, p. 1.
- 25 ITALY—TURKEY. Peace treaty signed at Angora. *Evening Star*, Nov. 28, 1921, p. 16.

December, 1921.

- 1 BARCELONA CONVENTIONS. Period closed for signature of conventions of transit and of navigable waterways (with protocol) and declaration recognizing right to a flag of states having no sea-coast. List of signatory members: *L. N. M. S.*, Dec., 1921, p. 170.
- 1 NORWAY—SPAIN. Provisional commercial agreement concluded by exchange of notes. *Bd. of trade j.*, Dec. 22, 1921, p. 663.
- 4 BULGARIA—UNITED STATES. Full diplomatic relations resumed. *Wash. Post*, Dec. 7, 1921, p. 6.
- 5 GERMANY—SWITZERLAND. Arbitration treaty signed for a period of ten years, which if not denounced within three months of date of expiration, will run for ten years more. *Temps*, Dec. 21, 1921, p. 2.
- 5 GUATEMALA. General Orellana elected provisional president to take place of Carlos Herrera. *N. Y. Times*, Dec. 10, 1921, p. 1.
- 6 GERMANY—PORTUGAL. Commercial agreement signed at Lisbon. *Bd. of trade j.*, Dec. 29, 1921, p. 682.
- 6 IRISH TREATY. Treaty signed at London by British Cabinet and conference delegates of the Irish Dail Eireann. Text: *N. Y. Times*, Dec. 7, 1921, p. 1; *Times*, Dec. 7, 1921, supplement; *Cur. Hist.*, Jan., 1922, 15:568.
- 8 AUSTRIA—SOVIET RUSSIA. Political and commercial treaty signed at Vienna, *Wash. Post*, Dec. 9, 1921, p. 1; *Cur. Hist.*, Jan., 1922, 15:665.

- 10 CONFERENCE ON LIMITATION OF ARMAMENT. Held fourth plenary session for announcement of conclusion of four-power treaty between the United States, Great Britain, France and Italy. Text: *Cur. Hist.*, Dec., 1921, 15:544.
- 10 NOBEL PEACE PRIZE, 1921. Awarded to M. Brantung, prime minister of Sweden, and M. Christian Lange, secretary-general of the Inter-parliamentary bureau, Geneva. *Times*, Dec. 12, 1921, p. 9.
- 12 HUNGARY—UNITED STATES. Peace treaty ratified by Hungary. *Cur. Hist.*, Jan., 1922, 15:672.
- 12 JAPAN—UNITED STATES. Secretary Hughes announced that accord had been reached on Yap and other islands north of the equator held by Japan under League mandates. *N. Y. Times*, Dec. 13, 1921, p. 1.
- 13 FOUR POWER TREATY ON PACIFIC QUESTIONS. Signed by United States, Great Britain, France and Japan at Washington Conference on Limitation of Armaments. Text: *Cur. Hist.*, Dec., 1921, 15:545.
- 13-14 TACNA—ARICA QUESTION. On Dec. 13 Chile invited Peru to hold plebiscite in provinces of Tacna and Arica. *Wash. Post*, Dec. 14, 1921, p. 1. Reply of Peru of Dec. 18 rejected plebiscite plan and proposed arbitration. *Wash. Post*, Dec. 20, 1921, p. 3.
- 14 CZECHOSLOVAK REPUBLIC—POLAND. Agreement for compulsory arbitration under Permanent court notified to League of Nations. *N. Y. Times*, Dec. 15, 1921, p. 5.

INTERNATIONAL CONVENTIONS

AUSTRIAN PEACE TREATY. Saint Germain-en-Laye, Sept. 10, 1919.

Ratification:

Portugal, Oct. 15, 1921. *J. O.*, Nov. 29, 1921, p. 13078.

BULGARIAN PEACE TREATY. Neuilly, Nov. 27, 1919.

Ratification:

Japan, Oct. 31, 1921. *J. O.*, Nov. 27, 1921, p. 13030.

COPYRIGHT UNION. Revision, Berne, Nov. 13, 1908. Protocol, Berne, March 20, 1914.

Adhesion:

Brazil, Sept. 7, 1921. *Ga. de Madrid*, Sept. 8, 1921, p. 980.

COPYRIGHT UNION. Protocol, Berne, Mar. 20, 1914. Revision, Berlin, Nov. 13, 1908.

Ratification:

Belgium, Nov. 4, 1921. *E. G.*, Nov. 23, 1921, p. 824; *Ga. de Madrid*, Dec. 5, 1921, p. 781.

COPYRIGHT UNION. Revision, Berne, Nov. 13, 1908. Protocol, Berne, Mar. 20, 1914.

Ratification:

Liberia, May 31, 1920. *E. G.*, Oct. 5, 1921, p. 692; *Monit.*, Oct. 16, 1921, p. 9145.

CUSTOMS TARIFFS, Publication. Brussels, July 5, 1890.

Adhesion:

Estonia, Oct. 7, 1921. *E. G.*, Oct. 26, 1921, p. 740. *Ga. de Madrid*, Nov. 2, 1921, p. 389.

Finland, Sept. 5, 1921. *E. G.*, Oct. 12, 1921, p. 703.

EIGHT HOUR DAY. Washington, Nov. 28, 1919.

Ratification:

Czechoslovak Republic, Apr. 30, 1921. *I. L. O. B.*, Sept. 7, 1921, p. 18.

India, Jan. 26, 1921. *I. L. O. B.*, July 20, 1921, p. 50.

EMPLOYMENT (FINDING) FOR SEAMEN. Genoa, July 10, 1920.

Ratification:

Norway, Nov. 16, 1921. *I. L. O. B.*, Nov. 30, 1921, p. 466.

Sweden, Sept. 12, 1921. *I. L. O. B.*, Oct. 26, 1921, p. 378.

EMPLOYMENT OF CHILDREN AT SEA. Genoa, July 9, 1920.

Ratification:

Sweden, Sept. 12, 1921. *I. L. O. B.*, Oct. 26, 1921, p. 377.

EMPLOYMENT OF CHILDREN IN INDUSTRY. Washington, Nov. 28, 1919.

Ratification:

Czechoslovak Republic, Apr. 30, 1921. *I. L. O. B.*, Sept. 7, 1921, p. 19.

GENEVA CONVENTION. Aug. 22, 1864. Revisions.

Adhesion:

Danzig, Oct. 6, 1921. *E. G.*, Nov. 2, 1921, p. 759; *Ga. de Madrid*, Nov. 2, 1921, p. 388.

Lithuania, Sept. 16, 1921. *Ga. de Madrid*, Sept. 24, 1921, p. 1226.

HUNGARIAN PEACE TREATY. Trianon, June 4, 1920.

Ratification:

Greece, Oct. 15, 1921. *J. O.*, Nov. 29, 1921, p. 13078.

Japan, Oct. 31, 1921. *J. O.*, Nov. 27, 1921, p. 13030.

Rumania, Sept. 10, 1921. *Temps*, Sept. 10, 1921, p. 4.

MOTOR VEHICLES, INTERNATIONAL CIRCULATION OF. Paris, Oct. 11, 1909.

Adhesion:

Danzig, Oct. 18, 1921. *E. G.*, Nov. 2, 1921, p. 760; *Ga. de Madrid*, Nov. 2, 1921, p. 388.

Notification that treaty is binding:

Austria, Aug. 1, 1921. *E. G.*, Nov. 30, 1921, p. 833; *Ga. de Madrid*, Nov. 27, 1921, p. 671.

NIGHT WORK OF WOMEN. Berne, Sept. 26, 1906.

Adhesion:

Danzig, Aug. 23, 1921. *E. G.*, Oct. 5, 1921, p. 691; *I. L. O. B.*, Nov. 9, 1921, p. 400.

Notification that treaty is binding:

Austria, July 25, 1921. *I. L. O. B.*, Aug. 31, 1921, p. 169.

NIGHT WORK OF WOMEN. Washington, Nov. 28, 1919.

Ratification:

Czechoslovak Republic, April 30, 1921. *I. L. O. B.*, Sept. 7, 1921, p. 19.

India, Jan. 26, 1921. *I. L. O. B.*, July 20, 1921, p. 51.

South Africa, Sept. 29, 1921. *I. L. O. B.*, Oct. 12, 1921, p. 332.

NIGHT WORK OF YOUNG PERSONS. Washington, Nov. 28, 1919.

Ratification:

India, Jan. 26, 1921. *I. L. O. B.*, July 20, 1921, p. 51.

PERMANENT COURT OF INTERNATIONAL JUSTICE. Protocol of signature. Geneva, Dec. 16, 1920.

Judges elected: Sept. 14-15, 1921.

Names of judges:

MM. Altamira (Spain), Anzilotti (Italy), Barboza (Brazil), De-Bustamante (Cuba), Lord Finlay (Great Britain), MM. Huber (Switzerland), Loder (Netherlands), Moore (U. S.), Nyholm (Denmark), Oda (Japan), Weiss (France).

Deputy judges:

MM. Beichmann (Norway), Negulesco (Roumania), Wang (China), Yovanovitch (Yugo-Slavia). *L. N. M. S.*, Oct., 1921, p. 109.

Ratification:

Belgium, Aug. 17, 1921. *Monit.*, Sept. 23, 1921, p. 8042.

PERMANENT COURT OF INTERNATIONAL JUSTICE. Optional clause, Geneva, Dec. 16, 1920.

Signatures:

Haiti, Lithuania, Norway, Panama, Oct., 1921. *L. N. M. S.*, Nov., 1921, p. 158.

PHYLLXERIC CONVENTION. Berne, Nov. 3, 1881. Supplement, Berne, Apr. 15, 1889.

Adhesion:

Austria, July 25, 1921. *Ga. de Madrid*, Sept. 13, 1921, p. 1035.

POSTAL CONVENTION. Madrid, Nov. 13, 1920.

Adhesion:

Danzig, Aug. 22, 1921. *E. G.*, Nov. 2, 1921, p. 758.

Lithuania, Aug. 29, 1921. *Ga. de Madrid*, Oct. 26, 1921, p. 288.

Promulgation:

Spain, Nov. 19, 1921. *Ga. de Madrid*, Nov. 23, 1921, p. 630. *Commerce repts.*, Jan. 16, 1922, p. 156.

Ratification:

All signatories, Dec. 1, 1921. *Times*, Dec. 2, 1921, p. 9.

PROTECTION OF BIRDS USEFUL TO AGRICULTURE. Paris, Mar. 19, 1902.

Notification that treaty is binding:

Austria, Aug. 1, 1921. *Ga. de Madrid*, Dec. 17, 1921, p. 933.

PROTECTION OF INDUSTRIAL PROPERTY. Paris, Mar. 20, 1883. Revision, Brussels, Dec. 14, 1900; Washington, June 2, 1911.

Adhesion:

Danzig, Oct. 5-6, 1921. *E. G.*, Oct. 26, 1921, p. 738; *Monit.*, Nov. 13, 1921, p. 10145.

Finland, Aug. 2, 1921. *Reichs. G.*, Sept. 23, 1921, No. 96, p. 1264.

PROTECTION OF INDUSTRIAL PROPERTY (affected by world war). Berne, June 30, 1920.

Adhesion:

Danzig, Oct. 5-6, 1921. *E. G.*, Oct. 26, 1921, p. 738.

Ratification:

Portugal, Aug. 24, 1921. *Ga. de Madrid*, Sept. 16, 1921, p. 1081.

RADIOTELEGRAPH CONVENTION. London, July 5, 1912. Service Regulations, London, 1912.

Adhesion:

Austria, Oct. 19, 1921.

New Hebrides, *Monit.*, Dec. 7, 1921, p. 11087.

Danzig.

Poland (with reservations), *Monit.*, Nov. 23, 1921, p. 10535.

Venezuela, June 16, 1921. *Ga. oficial (Venezuela)* Extra number, Nov. 29, 1921, p. 1.

REFRIGERATION, INTERNATIONAL INSTITUTE OF. Paris, June 21, 1920.

Ratification:

Belgium, Finland, Italy, Monaco, Norway, Serb, Croat, Slovene State, Oct. 17, 1921. *J. O.*, Dec. 1, 1921, p. 13134.

REPRESSION OF OBSCENE PUBLICATIONS. Paris, May 4, 1910.

Adhesion:

Czechoslovak Republic, May 16, 1921. *J. O.*, Nov. 27, 1921, p. 13030.

SANITARY CONVENTION. Paris, Jan. 17, 1912.

Ratification:

Guatemala, Nov. 10, 1921. *J. O.*, Dec. 29, 1921, p. 14190.

Uruguay, July 18, 1921. *E. G.*, Nov. 23, 1921, p. 804; *Ga. de Madrid*, Nov. 13, 1921, p. 516.

SUBMARINE CABLES. Paris, Mar. 14, 1884. Declarations, Dec. 1, 1887.
Protocol, July 7, 1887.

Notification that treaty is binding:

Austria, Dec. 3, 1921. *Ga. de Madrid*, Dec. 14, 1921, p. 909.

TELEGRAPH. St. Petersburg, July 22, 1875.

Adhesion:

China, Aug. 31, 1921. *E. G.*, Oct. 5, 1921, p. 691; *Monit.*, Nov. 23, 1921, p. 10535.

TRADE-MARKS REGISTRATION. Madrid, Apr. 14, 1891. Revision, Washington, June 2, 1911.

Adhesion:

Czechoslovak Republic, Aug. 16, 1921. *E. G.*, Oct. 5, 1921, p. 690.

UNEMPLOYMENT CONVENTION. Washington, Nov. 28, 1919.

Ratification:

Denmark, Sept. 24, 1921.

Finland, Oct. 19, 1921. *I. L. O. B.*, Nov. 2, 1921, pp. 392 and 394.

India, Jan. 26, 1921. *I. L. O. B.*, July 20, 1921, p. 50.

Sweden, Sept. 12, 1921. *I. L. O. B.*, Oct. 26, 1921, p. 377.

UNIVERSAL POSTAL UNION. Rome, May 26, 1906.

Adhesion:

Danzig, Aug. 22, 1921. *E. G.*, Nov. 2, 1921, p. 758.

Lithuania, Aug. 29, 1921. *Ga. de Madrid*, Oct. 26, 1921, p. 288.

WEIGHTS AND MEASURES. Paris, May 20, 1875.

Promulgation:

Austria, Aug. 1, 1921. *E. G.*, Oct. 19, 1921, p. 724.

WHITE SLAVE TRADE. Paris, May 18, 1904.

Adhesion:

Czechoslovak Republic, May 17, 1921. *J. O.*, Nov. 27, 1921, p. 13030.

Ga. de Madrid, Dec. 18, 1921, p. 938.

WHITE PHOSPHORUS IN MATCHES. Berne, Sept. 26, 1906.

Adhesion:

Austria, July 25, 1921. *I. L. O. B.*, Aug. 31, 1921, p. 170.

Danzig, Aug. 23, 1921. *E. G.*, Oct. 5, 1921, p. 692; *Ga. de Madrid*, Sept. 26, 1921, p. 1250.

Finland, Oct. 13, 1921. *I. L. O. B.*, Nov. 16, 1921, p. 17; *E. G.*, Nov. 23, 1921, p. 818.

Japan, Oct. 14, 1921. *I. L. O. B.*, Nov. 9, 1921, p. 408; *E. G.*, Nov. 2, 1921, p. 760.

Rumania, July 21, 1921. *Reichs. G.*, Sept. 9, 1921, p. 1255.

WHITE SLAVE TRADE. Paris, May 4, 1910.

Adhesion:

Czechoslovak Republic, May 17, 1921. *J. O.*, Nov. 27, 1921, p. 13030;

Ga. de Madrid, Dec. 18, 1921, p. 938.

M. ALICE MATTHEWS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN¹

Canada-France. Trade agreement of Jan. 29, 1921. (Treaty series, 1921, No. 16.) 2d.

Copyright of Hungarian nationals vested in Custodian. Order of Board of Trade as to "vested copyright" and "restored copyright." Aug. 16, 1921. (S. R. & O., 1921, 1314.) 3d.

Copyright. Treaty of Peace (Hungary, copyright) Rules, Sept. 5, 1921. (S. R. & O., 1921, 1452). 2d.

Egypt. Agreement between Great Britain and Denmark relating to the suppression of the capitulations in July 14, 1921. (Treaty series, 1921, No. 15.) 2d.

———. Agreement between Great Britain and Sweden, July 8, 1921. (Treaty series, 1921, No. 14.) 2d.

Egypt and Soudan, Reports by H. M. H. High Commissioner on the finances, administration and condition of, for the year 1920. (Cmd. 1487.) 2s. 4d.

Fleets of Great Britain, France, Russia, Germany, Italy, Austria-Hungary, United States of America, and Japan, on Feb. 1, 1921, omitting ships over twenty years old, and armaments reduced to a common scale. (H. C. Reports and Papers, 1921, No. 164.) 1s. 2½d.

German Reparation Recovery Order, No. 12, Sept. 29, 1921, made by the Board of Trade. (S. R. & O. 1921, 1531.) 2d.

German war trials. Report of proceedings before Supreme Court in Leipzig, with appendices. (Cmd. 1450.) 7½d.

Imperial Conference. Summary of proceedings and documents of conference of Prime Ministers and representatives of the United Kingdom, the Dominions, and India, held in June, July and August, 1921. (Cmd. 1474.) 11½d.

Imperial Shipping Committee, Report on functions and constitution of. (Cmd. 1483.) 3d.

India Treaty of Peace (Austria) amendment orders, 1921. (S. R. & O., 1921, 1214 and 1245.) 2d each.

International Opium Convention, 1912, and subsequent relative papers. (Treaty series, 1921, No. 17.) 1s.

¹Parliamentary and official publications of Great Britain may be obtained for the amount noted from the Director of Publications, H. M. Stationery Office, Imperial House, Kingsway, London, W. C. 2.

Irish settlement. Arrangements governing the cessation of active operations in, which came into force on July 11, 1921. (Cmd. 1534.) 3d.

———. Correspondence relating to proposals of H. M. Government. (Cmd. 1470, 1502.) 2d each, (Cmd. 1539.) 7d.

Kenya Colony and Protectorate (East Africa). Boundaries. Order in Council, June 27, 1921. (S. R. & O., 1921, 1134.) 2d.

———. Despatch to the officer administering the government of, relating to native labor. (Cmd. 1509.) 2d.

———. Report No. 1089, 1919-1920. Colonial Office. 1s. 1½d.

League of Nations. Speech to the Imperial Conference of the Lord President of the Council of the League of Nations. (H. C. Reports and Papers, 1921, No. 195.) 2d.

Mandates. Final drafts for Mesopotamia and Palestine for the approval of the Council of the League of Nations. (Cmd. 1500.) 3d.

Mixed Arbitral Tribunal between British Empire and Austria constituted under Art. 256 of the Treaty of St. Germain-en-Laye, Rules of procedure. Aug. 16, 1921. (S. R. & O., 1921, 1301.) 6d.

———. Between British Empire and Bulgaria constituted under Art. 188 of the Treaty of Neuilly-sur-Seine. Rules of procedure, Aug. 16, 1921. (S. R. & O., 1921, 1458.) 6d.

———. Between British Empire and Hungary constituted under Art. 239 of Treaty of Trianon. Rules of procedure, Aug. 18, 1921. (S. R. & O., 1921, 1422.) 7d.

Mixed Arbitral Tribunals established by the Treaties of Peace. Collection of decisions. (French.) Nos. 3 and 4, June and July, 1921. *Foreign Office*, 3s. 6d; No. 5, August, 1921, 3s. 7½d.

Patents, designs, and trade-marks. Order in Council applying Sec. 91 of the Act of 1907 to Bulgaria. July 14, 1921. (S. R. & O., 1921, 1213.) 2d.

Patents of Hungarian nationals vested in Custodian. Order of Board of Trade as to "vested patents," "vested applications," and "restored patents." Aug. 16, 1921. (S. R. & O., 1921, 1315.) 3d.

Patents. Treaty of Peace (Hungary, patents) Rules, Sept. 5, 1921. (S. R. & O., 1921, 1453.) 2d.

Peace Handbooks prepared under direction of Historical Section. Foreign Office. Vol. XVIII. German possessions in Africa. (Cloth ed.) 13s.

Petroleum situation. Despatch to Ambassador at Washington enclosing a memorandum on the. (Misc., 1921, No. 17.) 2d.

Russia-Great Britain trade agreement. Correspondence between H. M. Government and the French Government respecting. (Russia, 1921, No. 2.) 4½d.

Tanganyika Territory. Report on, covering the period from the conclusion of the armistice to the end of 1920. (Cmd. 1428.) 1s. 8d.

Thrace, Treaty between the Allied Powers and Greece relative to, signed at Sévres, Aug. 10, 1920. (Treaty series, 1921, No. 13.) 2d.

Trading with the Enemy Order, 1921. Custodian direction. (S. R. & O., 1921, 1405.) 2d.

Treaty of Peace (Hungary) Order, 1921. (S. R. & O., 1921, 1285.) 9½d.

———. Egypt Order in Council, Aug. 10, 1921. (S. R. & O., 1921, 1401.) 2d.

Turkey, Reports on atrocities in certain districts of. (Turkey, 1921, No. 1.) 3d.

War, Order in Council declaring date of termination of. Aug. 10, 1921. (S. R. & O., 1921, 1276.) 2d.

War with Hungary, Order in Council determining date of termination of. Aug. 10, 1921. (S. R. & O., 1921, 1284.) 2d.

UNITED STATES²

Cables, submarine. Executive order directing that Secretary of State shall receive all applications for licenses to land or operate. July 9, 1921. 1 p. (No. 3513.) *State Dept.*

China. Report to accompany bill (H. R. 8221) for relief of. Aug. 23, 1921. 5 p. (H. rp. 381.) *Claims Committee.*

Chinese Indemnity. Report to accompany S. J. Res. 85 for remission of further payments of annual installments. Aug. 10, 1921. 5 p. (S. rp. 250.) *Foreign Relations Committee.*

Colorado River. Act to permit compact or agreement between Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, respecting the distribution and apportionment of waters of Colorado River. Approved Aug. 19, 1921. 1 p. (Public 56.) 5c.

Consular officers, notarial manual for. 1921. 84 p. Cloth, 40c.

Extradition. Memorandum relative to applications for extradition from foreign countries of fugitives from justice. 1921. 3 p. *State Dept.*

Foreign exchange. Hearings on H. R. 8404 to investigate international exchange problem for purpose of determining means which may best be employed for stabilization of exchange. Oct. 8, 1921. Statement by H. N. Lawrie. 51 p. 10 pl. *Banking and Currency Committee.*

Foreign loans. Hearings on H. R. 7359 to enable refunding of obligations of foreign governments owing to United States. Oct. 6, 1921. 23 p. *Ways and Means Committee.*

———. Report to accompany H. R. 8762 to create commission authorized to refund or convert obligations of foreign governments owing to

²Where prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

United States. Oct. 20, 1921. 10 p. (H. rp. 421.) *Ways and Means Committee.*

Foreign Relations of United States. List of publications for sale by Superintendent of Documents. Sept., 1921. 42 p. (Price list 65, 5th ed.) *Govt. Printing Office.*

Germany. Treaty of peace with Germany, Aug. 25, 1921, together with Sec. 1 of Pt. 4 and Pts. 5, 6, 8-12, 14 and 15 of Treaty of Versailles under which the United States claims rights and privileges. 123 p. (S. doc. 70.) *Senate.*

Haiti, Inquiry into occupation and administration of, and Santo Domingo. Hearing, Aug. 5, 1921. Pt. 1, 104 p. *Select Committee.*

Immigration laws, rules of May 1, 1917. 6th ed. Sept., 1921. 119 p. map. Paper, 10c.

———. Information relative to immigration laws and their enforcement in connection with admission of aliens. 1921. 4 p. *Immigration Bureau.*

Japanese immigration and colonization. Skeleton brief by V. S. McClatchy, representative of Japanese Exclusion League of California, filed with Secretary of State. 1921. 143 p. (S. doc. 55.) *Senate.*

Liberia, proposed loan to. (S. doc. 58.) Aug. 1, 1921. 3 p. *State Dept.*

Naturalization laws and regulations. Sept. 24, 1920. Reprint, 1921. 45 p. Paper, 5c.

New York harbor. S. J. Res. 88, joint resolution granting consent of Congress to agreement or compact entered into between State of New York and State of New Jersey for creation of Port of New York District and establishment of Port of New York Authority for comprehensive development of port. Approved Aug. 23, 1921. 8 p. (Pub. res. 17.) 5c.

Norway, Agreement between United States and, for submission to arbitration of certain claims of Norwegian subjects. June 30, 1921. 5 p. (Treaty series 654.) *State Dept.*

Panama Canal, Canal Zone, Republic of Panama, Colombia treaty, and Nicaragua. Publications for sale by Superintendent of Documents. Sept., 1921. 8 p. (Price list 61, 6th ed.) *Govt. Printing Office.*

Pan American Financial Conference. Committees appointed by Secretary of Treasury to carry out recommendations of. 1921. 15 p. *Inter-American High Commission.*

Passports. Executive order amending order of Aug. 8, 1918, concerning entry of aliens into Panama Canal Zone. Oct. 18, 1921. 1 p. (No. 3562.) *State Dept.*

———. Executive order amending order of Aug. 8, 1918, concerning entry of aliens into United States in transit for foreign destination. Sept. 29, 1921. 1 p. (No. 3555.) *State Dept.*

Passports. Notice concerning use of. Aug. 1, 1921. 2 p. *State Dept.*
Russia. Political and economic report of British Committee to Collect Information on Russia, presented to Parliament. 1921. 217 p. (S. doc. 50.) *Senate*.

St. Mary River. Reargument in matter of measurement and apportionment of waters of St. Mary and Milk Rivers and their tributaries under Art. 6 of treaty of Jan. 11, 1909, between United States and Canada. May 3-5, 1920. 200 p. *International Joint Commission on Boundary Waters between United States and Canada*.

Treaties. Compilation of treaties between United States and certain foreign Powers with amendments, modifications, or reservations adopted by Senate and action of foreign governments thereon. 1921. 317 p. (S. doc. 72.) *Senate*.

War munitions. Report to accompany S. H. Res. 124 to amend S. J. Res. 89, approved March 14, 1912, so that the President may limit export of arms or munitions of war to any country in which United States exercises extraterritorial jurisdiction and in which domestic violence exists. Oct. 17, 1921. 2 p. (S. rp. 299.) *Foreign Relations Committee*.

GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

AMERICAN AND BRITISH CLAIMS ARBITRATION TRIBUNAL¹

[Arbitrators: M. Henri Fromageot, Sir Charles Fitzpatrick,
Hon. Chandler P. Anderson]

IN THE MATTER OF THE ARGONAUT AND COLONEL JONAS H. FRENCH

CLAIMS NOS. 14 AND 15

Decision rendered December 2, 1921

The Government of the United States claims from the Government of His Britannic Majesty, on account of the wrongful seizure and confiscation of some boats and seines of the American vessels *Argonaut* and *Colonel Jonas H. French*, and the consequent loss to the owners of such vessels by reason of such seizures and the threatened seizure of the vessels, the sum of \$46,655.75 with interest, being \$24,600 on account of the *Argonaut*, and \$22,055.75 on account of the *Colonel Jonas H. French*.

On the 24th of July, 1887, the *Argonaut* and *Colonel Jonas H. French*, two American schooners, duly registered and licensed at Gloucester, Massachusetts, United States, were fishing for mackerel southward of East Point, Prince Edward Island, Dominion of Canada, in the vicinity of the Canadian Government Cutter *Critic* and some other American fishing vessels.

In the afternoon of that day, the *Argonaut* being off West River, discovered a school of mackerel and sent one of her boats with a seine to catch them.

It is shown by the affidavits sworn on August 5 and 12, 1887 by the owner, the master and men of the *Argonaut* (United States Memorial, Exhibits 7, 8, 9) that the seine was set and enclosed the mackerel at a distance of about four miles from shore (United States Memorial, Exhibit 7), and also that there was at that time an ebb tide running eastward at the rate of about three miles an hour (*ibid.*).

It appears that the seine being fouled, about one hour elapsed before it was pursed up and the fish secured (United States Memorial, Exhibit 8), and during that time the aforesaid ebb tide set the boat and seine towards the shore quite rapidly (United States Memorial, Exhibit 7). In order to

¹Previous decisions of the Tribunal are printed in this JOURNAL, Vol. 13, pp. 875-890; Vol. 14, pp. 650-66; Vol. 15, pp. 292-304.

avoid difficulties with the Canadian Cutter, the seine was taken up into the boat and the fish turned out alive.

At that time the Canadian Cutter was about a mile away from the boat. The master of the *Argonaut* went to the *Critic* and asked if they considered the seine and boat within three miles of the shore, informing the captain that the tide had swept them from a position fully a mile outside. The captain of the *Critic* replied that the boat and seine were only two miles off shore. Notwithstanding the explanation of the master of the *Argonaut* that if the seine was inside the limit it was entirely without design on his part but the result of the tide taking it in, the seine and boat were seized and twelve men arrested.

About the same time and place, the schooner *Colonel Jonas H. French* was lying about three and a half miles off shore when she saw mackerel outside of her about a mile (United States Memorial, Exhibit 14). Two boats went with their seines, which were set around the fish, and one of the boats with two men in it were left in charge of the seine with the mackerel enclosed. These men soon found that they were drifting rapidly with the tide along the shore and also toward the shore, and they had no anchor or other means of preventing the boat and seine from going with the tide (United States Memorial, Exhibit 15). Finding that they must inevitably drift inside the three-mile limit, they endeavored to take in the seine, and, while doing so, were arrested by the Cutter *Critic*. About three-quarters of an hour had elapsed from the time the boat was left as aforesaid until the seizure (United States Memorial, Exhibit 15).

On July 29, 1887, two brief printed circulars were addressed by the captain of the *Critic* to the United States Consul General at Halifax, Nova Scotia, stating the fact of the seizures "for violation of the statutes in force in Canada, relating to foreign fishing vessels" (United States Memorial, Exhibit 2).

Immediately after the seizure of their boats and seines and the arrest of their men, the masters of the *Argonaut* and the *Colonel Jonas H. French* abandoned their fishing trip and returned to their home port in the United States. While returning they heard that it was the intention of the Canadian authorities to seize the schooners themselves wherever they could be found outside the territorial waters of the United States (United States Memorial, Exhibits 3, 4, 10).

On September 19, 1887, proceedings were begun in the Vice-Admiralty Court of Prince Edward Island for the forfeiture of the boats and seines, and on March 6, 1888, two decisions *ex parte* were rendered condemning the same to be forfeited for having been found to be fishing and to have been fishing and preparing to fish in the Canadian waters within three miles of the shore. (British Answer, Annexes 57, 58.)

It is shown by the documents that the owners, although opportunity was given to them to make the necessary application to the Vice-Admiralty

Court, did not exercise their right to have the cases reopened and to put in their defence before the court. (United States Memorial, Exhibits 25, 26.)

It does not appear that there was any diplomatic correspondence relating to these cases before they were submitted to this arbitration.

In law:

By article 1 of the Treaty concluded at London, October 20, 1818, between the United States and Great Britain, it was stipulated that, except in certain localities, without interest in this case, the United States renounced

forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included within the above mentioned limits; Provided, however, that the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever.

By the Imperial Statute 59, George III, Chapter 38 (1819), article II, it is prohibited to any foreigner in a foreign vessel to fish for or to take any fish within the three-mile limit of the Canadian coast, and by the Revised Statutes of Canada, 1856, chapter 94, sections 1, 2, 3 and 7, certain penalties and the forfeiture of the vessel, and the legal prosecutions are provided for in case of contravention.

It is a universally recognized principle of international law that a State has jurisdiction over sea-fishing within its territorial waters, and to apply thereto its municipal law, and to impose in respect thereof such prohibitions as it may think fit. The Treaty of 1818 did not make any exception in regard to the inhabitants of the United States in these waters.

The only question then to be decided in this case is whether or not the boats and seines of the *Argonaut* and *French* were within the three-mile limit.

It is to be noted that, though the Canadian regulations required them to be made (see *David J. Adams'* case, United States Memorial, p. 358), no official statement of the circumstances of the alleged offences or of the legal provisions alleged to be contravened, no document drawn up by the officers who carried out the seizures proving the alleged illegal position of the boats and seines, or reporting any bearings or soundings taken at the time, are presented by the British Government in justification of the action of their naval authorities. The log book of the Cutter *Critic* is not even produced. The only documents presented are the two brief reports, above referred to, stating the fact of the seizures for violation of the statutes in force in Canada, relating to foreign fishing vessels. This is insufficient proof of the legality of the seizures.

However, according to article 5, paragraph 4, of the Special Agreement, this Tribunal is to decide all claims submitted upon such evidence or information as may be furnished by either Government.

In regard to the *Argonaut*, it results from the affidavits of the owner, master and men, produced by the United States (United States Memorial, Exhibits 7, 8) and above referred to, that, first, the boat and seine were set at four miles off shore; second, that they remained out for about one hour and were drifting shoreward with the tide; and third, that the tide was running to the eastward at from two and a half to three miles an hour.

In his protest, the owner does not contest so much the position of the boat and seine within the three-mile limit as the alleged act of fishing to which the Canadian law was applied; nor does the United States Consul General, when reporting to the Assistant Secretary of State on August 7, 1887, the statements of the men, deny that the boats were seized within the three-mile limit (United States Memorial, Exhibit 2).

In regard to the boat and seine of the *Colonel Jonas H. French*, the sworn affidavits of the owner, master and men, produced by the United States (United States Memorial, Exhibits 14 and 15) show, first, that the vessel was three and a half miles from the shore; second, that the mackerel were one mile outside the vessel, so that the boat and seine were four and a half miles from the shore when the seine was set out; and third, that they delayed about three-quarters of an hour, being swept shoreward by the ebb tide, when they were seized.

It must be observed that though the intention was to fish quite near the three-mile limit and though with the exercise of a very small amount of prudence it could have been foreseen that there would be a strong tide setting shorewards, there was on board the boat no anchor or any other means of preventing it drifting within the prohibited zone.

On all the facts presented in these cases, this Tribunal finds that the boats and seines of both vessels were less than three miles from the shore when seized.

The boats and seines of the two vessels being inside the territorial waters, were, from the international law point of view, undoubtedly subject to the municipal law and the jurisdiction of Canada, and the question whether or not, under the circumstances of these cases, taking into consideration the good faith of the fishermen and the exact character of their acts, a proper interpretation and application of the Canadian law was made by the Canadian court is a question of municipal law and not a question of international law to be decided by this Tribunal, so far as these cases stand.

In regard to the contended intention of the Canadian authorities, to seize the two schooners themselves, that mere intention, even if any such existed, cannot by itself be the basis for indemnity unless it was actually

manifested by some wrongful act, and, in that respect, no sufficient evidence is offered to establish any order of seizure given, or any other measure of execution taken against the two vessels.

FOR THESE REASONS:

This Tribunal decides that the claims be dismissed.

The President of the Tribunal,

(Signed) HENRI FROMAGEOT.

IN THE MATTER OF THE SIDRA

CLAIM No. 23

Decision rendered November 29, 1921

This is a claim presented by His Britannic Majesty's Government for £4,336/7/4 and £1,127 interest for damages on account of a collision which occurred during a dense fog in the Patapsco River in the approaches of Baltimore Harbor, Maryland, in the territorial waters of the United States on the 31st of October, 1905, between the United States Government tug boat *Potomac* and the British merchant ship *Sidra*.

It appears from her certificate of registry that the *Sidra*, a steam-screw vessel, was in 1905 a British ship of 5,400 tons displacement, 322 feet long and drawing 10 to 12 feet.

The *Potomac* was a steam-screw tug boat owned by the United States Government; she was 135 feet in length with a draft of about 15 feet; her displacement was 650 tons.

On October 31, 1905, at 6 o'clock in the morning, the *Sidra* bound from New York to Baltimore was proceeding up the channel to Baltimore harbor; the pilot and the captain were on the bridge, a seaman was at the wheel, the chief officer and carpenter were stationed on the forward deck by the anchor, which was ready to let go.

At about 7:30 a. m. soon after passing Fort Carroll, the weather became foggy, and the fog became so thick that at 7:45 in the judgment of pilot it was prudent to anchor. The exact position of the vessel, when anchored, is contested.

Immediately upon anchoring, the *Sidra* rang her bell in conformity with the Inland Rules of the United States, article 15, and thereafter hearing the fog-blasts of an approaching steamer, which proved to be the *Potomac*, she continued to ring her bell.

On the same day, October 31, 1905, at about 6 a.m., the United States tug boat *Potomac* had left Annapolis, under orders to proceed to Baltimore to obtain provisions for the North Atlantic fleet and to return to Annapolis on the afternoon of that same day (United States Answer, Exhibit 6). The commanding officer was on the bridge and with him a Government

licensed pilot and the boatswain as lookout. She had no lookout on the forecastle.

At about 8 o'clock in the morning the *Potomac* passed Fort Carroll and proceeded up the river on the starboard side of the channel heading up; at that time the weather was still clear (United States Answer, p. 44), but about ten minutes later it suddenly changed and a dense fog shut in upon the water.

Before the fog shut down, the *Potomac* sighted a steamer under way about two miles ahead in the channel, and, according to the commanding officer, she was the *Sidra* (United States Answer, p. 18).

As soon as the fog shut in, the *Potomac* slowed gradually until going 4 knots (United States Answer, p. 44), and blew her whistle in conformity with the regulations. She passed on starboard hand close aboard of one of the buoys marking the starboard side of the channel, then she passed a second one which she ran over, then having altered her course so as to keep more in the channel, she heard the bell of a ship, which proved to be the *Sidra*. The sound seemed to her to come from dead ahead; her course was altered so as to bring it on the starboard bow. But suddenly the shape of the steamer loomed up dead ahead at about 100 or 150 feet. The *Potomac* immediately reversed the engines full speed astern, but she was unable to check her headway in sufficient time to avoid collision. The *Potomac* collided with the *Sidra* at about right angles, causing her a large amount of damage without damaging herself. At the moment of the collision it was 8:15 a.m.

A few days after the collision occurred, i.e. on November 3, 4, 6 and 9, 1905, a United States Naval Board of Investigation was convened by the Commander in Chief of the North Atlantic Fleet, to inquire into the circumstances of the collision, and to express an opinion as to which one of the two vessels was responsible for the collision. The conclusion reached by that board was that the *Sidra* was responsible, as she might have anchored well clear of the channel and she did not.

Before this Tribunal the British Government contend that the collision occurred by the fault of the *Potomac* in that she was proceeding at an excessive rate of speed in fog and did not stop her engines and navigate with caution on hearing forward of her beam the fog signal of a vessel anchored, whose position was not ascertained, and further in that the *Potomac* did not keep within the channel but ran outside thereof, and in that she did not maintain a proper or sufficient lookout.

The United States Government contends that the collision was due to the fault of the *Sidra* in anchoring in the channel and obstructing the path of navigation, while she might, without difficulty and with perfect safety, have been anchored outside and out of the path of other vessels.

According to the well settled Admiralty rule, recognized both in the United States and Great Britain, in case of a collision between two ships,

one of them being moving and the other at anchor, the liability is for the vessel underway, unless she proves that the collision is due to the fault of the other vessel.

Consequently in this case, the responsibility lies upon the *Potomac* and the Government of the United States, unless and so far as it is established that the *Sidra* was in fault.

In that respect there is not sufficient evidence to show the exact location of the place where the *Sidra* anchored and the collision took place. It has been stated by the commanding officer of the *Potomac* (United States Answer, p. 17) that the *Sidra's* anchor was a little outside the line of buoys on the easterly or starboard side of the channel, the ship herself lying across the channel. Also, there is the concurring statement of those on board two other vessels, the *Chicago* and the *Sparrow*. The *Sparrow* said that she saw the *Sidra* lying her portside parallel with the line of the channel about 50 yards from it, i.e., 160 feet. And the *Chicago* said that she saw the *Sidra* lying from 150 to 200 feet from the channel and at the time the vessel did not project into the channel.

On the other hand, the testimony of the captain of the *Sidra* shows that he took no soundings before or when anchoring (British Memorial, p. 41); that he did not know where he anchored from bearings, buoys, etc. (*ibid.*), and that he anchored when he thought he was clear of the channel, but he did not know (*ibid.* question 31, p. 41; question 79, p. 70; see also p. 76), and that after the collision at 8:20, the tide beginning to change, he used the engines to bring the vessel around quicker, in order not to be laying across the channel, and afterwards changed her anchorage in order not to be "worrying about" vessels passing up and down; furthermore he admitted that he could have gone at least half a mile further to the northeast with entire safety and that there is $\frac{3}{4}$ of a mile between the line of the channel and the shoal water (see British Memorial, pp. 64, 65, 70).

No sufficient evidence is afforded by the British Government to contradict the above elements of proof, from which it results that the *Sidra* anchored outside the channel, but, being given her 322 feet length, not far enough to prevent her from rounding across the eastern side of the path of navigation. As noted by the United States Board of Inquiry, "prudence would dictate to any vessel finding herself under the necessity of anchoring to choose a position well clear of the channel." This the *Sidra* did not do, and no reason is given why it could not have been done. As it has been shown there was about $\frac{1}{2}$ mile room farther outside the channel; the *Sidra* said that she rounded one of the buoys marking the channel before anchoring; then she had the possibility of calculating how far she had to go to be certain she was entirely clear of the line. It was so much more her duty to do it, since she heard the whistle of other vessels in the neighborhood. (British Memorial, p. 66, question 50.)

By that lack of prudence, the *Sidra* had, in this Tribunal's opinion, contributed to the collision.

As regard the *Potomac*, this Tribunal regrets not to have before it such important testimonies and documents as the testimony of the chief engineer and the log book of that vessel. But it results from the testimony of the commanding officer that when the vessel heard the bell of the *Sidra* she was going at 4 knots an hour, and that after she had stopped her engines and altered her course to port, again she continued her course ahead under the same speed (United States Answer, pp. 16, 32, 46 and 62) without ascertaining the location of that bell.

In dense fog, it is the common rule of prudent navigation not only to stop as soon as a bell is heard, but also to keep stopped until the location of the other vessel ringing the bell and being an obstruction be ascertained, and everybody knows that it is impossible in fog to rely upon the apparent direction of the sound for ascertaining that location (see Marsden, *Collisions at Sea*, pp. 378, 379).

That rule is confirmed by articles 16 and 23 of the Inland Rules of the United States as they have been construed by various federal decisions (*The Grenadier v. The August Korff*, 74 Fed. Rep. 974, 975).

Furthermore it must be observed that whatever be her naval orders, the *Potomac* was proceeding in a narrow channel of 600 feet wide, frequented by numerous ships going up and down, and that she knew another steamer was ahead on her way, and she had to be especially cautious as to her speed, and the strict observance of the most prudent navigation. The *Potomac*, as has been shown, had no lookout on the forecastle and she was proceeding in a fog so dense that she was unable to sight the *Sidra* until about 50 feet before colliding and she was proceeding at such a speed as to make her unable to avoid collision.

For these reasons, the *Potomac* is to be held responsible for the collision, for not navigating with sufficient prudence, and on the other hand, the *Sidra* is to be held as having contributed to the collision by having imprudently anchored too close to the channel.

According to the well settled rule of international law, the collision having occurred in the territorial waters of the United States the law applicable to the liability is the law of the United States, according to which when both ships are to blame the damage suffered by each of them must be supported by moiety by the other.

It results from the United States inquiry that the *Potomac* suffered no damage, and it is shown by the documents that the damage suffered by the *Sidra* amounts to £4,336/7/4, including £750 for demurrage. Consequently the United States Government, as the owner of the *Potomac*, is liable for £2,168/3/8.

As for the interest, it seems difficult to consider the letter of November 10, 1905, by which the representatives of the *Sidra* asked for the result

of the United States Naval investigation, as having brought the present claim to the notice of the United States Government.

FOR THESE REASONS:

This Tribunal decides that the United States Government shall pay to His Britannic Majesty's Government for the benefit of the owners of the *Sidra*, the sum of Two thousand one hundred and sixty-eight pounds, three shillings and eight pence (£2,168/3/8).

The President of the Tribunal,

HENRI FROMAGEOT.

IN THE MATTER OF THE SCHOONERS JESSIE, THOMAS F. BAYARD, AND
PESCAWHA

CLAIMS NOS. 24, 25, AND 26

Decision rendered December 2, 1921

These are three claims presented by His Britannic Majesty's Government: (1) for \$38,700 on behalf of the British schooner *Jessie*, (2) for \$51,628.39 on behalf of the British schooner *Thomas F. Bayard*, (3) for \$52,661.60 on behalf of the British schooner *Pescawha*, together with interest from June 23, 1909.

It is admitted that the *Jessie*, the *Thomas F. Bayard*, and the *Pescawha*, all of them British schooners, cleared at Port Victoria, B. C., for sealing and sea otter hunting, and were in June, 1909, actually engaged in hunting sea otters in the North Pacific Ocean; that on June 23, 1909, while on the high seas near the north end of Chirikof Islands they were boarded by an officer from the United States Revenue Cutter *Bear*, who, having searched them for seal skins and found none, had the firearms found on board placed under seal, entered his search in the ship's log, and ordered that the seals should not be broken while the vessels remained north of 35° north latitude, and east of 180° west longitude.

The United States Government admits in its answer to the British Memorial that there was no agreement in force during the year 1909 specifically authorizing American officers to seal up the arms and ammunition found on board British sealing vessels, and that the action of the Commander of the *Bear* in causing the arms of the *Jessie*, the *Thomas F. Bayard*, and the *Pescawha* to be sealed was unauthorized by the Government of the United States.

The United States Government, however, denies any liability in these cases, first, because the boarding officer acted in the *bona fide* belief that he had authority so to act, and second, because there is no evidence on the claims except the declaration of the interested parties, and because these claims are patently of an exaggerated and fraudulent nature.

•

I. As to the liability:

It is a fundamental principle of international maritime law that, except by special convention or in time of war, interference by a cruiser with a foreign vessel pursuing a lawful avocation on the high seas is unwarranted and illegal, and constitutes a violation of the sovereignty of the country whose flag the vessel flies.

It is not contested that at the date and place of interference by the United States naval authorities there was no agreement authorizing those authorities to interfere as they did with the British schooners, and, therefore, a legal liability on the United States Government was created by the acts of its officers now complained of.

It is unquestionable that the United States naval authorities acted *bona fide*, but though their *bona fides* might be invoked by the officers in explanation of their conduct to their own Government, its effect is merely to show that their conduct constituted an error in judgment, and any government is responsible to other governments for errors in judgment of its officials purporting to act within the scope of their duties and vested with power to enforce their demands.

The alleged insufficiency of proof as to the damage and the alleged exaggeration and fraudulent character of the claims do not affect the question of the liability itself. They refer only to its consequences—that is to say, the determination of damages and indemnity.

II. As to the consequences of the liability:

It must first be observed that the insufficiency of proof as to damages, and the alleged exaggeration of the claims formulated by the British Memorial are not enough in themselves to justify the charge that they are fraudulent in character. For this Tribunal, the mere fact that the claims are presented by the Government of His Britannic Majesty is sufficient evidence of their complete *bona fides*.

The three schooners, after their arms and ammunition had been sealed with an order that the seals must not be broken until they were outside the conventional protected zone of fur-sealing, went across the North Pacific Ocean to catch fur-seals alongside the Russian islands in the western part of that ocean.

It has been submitted by the United States Government that in any event the vessels would have made the same voyage; but of that contention no sufficient evidence has been given.

On the other hand, it is shown by the agreements with the crews that the possibility of such a voyage was contemplated by the owners and the captains. It is admitted by counsel for Great Britain that no damage was actually suffered on the voyage by any of the three vessels. Further, it is admitted that the catching of fur seals on the coasts of the Russian islands

was profitable, though a request by this Tribunal for some detailed information as to these profits has not been satisfied.

There has been adduced no evidence sufficient to establish that had there been no interference by the United States naval authorities the vessels would have made more or any profit from sea otter hunting in Behring Sea. It is admitted by the counsel for Great Britain that nothing is so uncertain as the profits of such a venture.

The amount of the demands is based merely on statements made by the interested parties themselves or on statistics and data which afford no sufficient evidence as to the sea otters caught by other British schooners, similarly equipped and manned, hunting during the same period and in the same localities as the three schooners in question intended to hunt.

In these circumstances, this Tribunal is only able to take into consideration the fact of the prohibition itself, by which in violation of the liberty of the high seas the vessels were interfered with in pursuing a lawful, and, it may be, profitable enterprise; but nobody can say whether that enterprise would have been more or less profitable than the one in which they actually engaged on the Russian coast or whether they would have encountered some mishap of the sea. In any case, the result was that the expenses incurred in engaging crews specially trained for this enterprise was unprofitable and wasted.

This Tribunal is of opinion that the following sums will be just and sufficient indemnities for each of the three vessels, viz.: for the *Jessie*, \$544 for her special expenses and \$1,000 for the trouble occasioned by the illegal interference; for the *Thomas F. Bayard*, \$750 for her special expenses and \$1,000 for the trouble occasioned by the illegal interference; and for the *Pescawha*, \$500 for her special expenses and \$1,000 for the trouble occasioned by the illegal interference.

As to interest, there is no evidence that any claim was ever presented to the Government of the United States before being entered on the Schedule annexed to the Special Agreement, and according to the terms of submission, section four, interest may only be allowed from the date on which any claim has been brought to the notice of the defendant party.

FOR THESE REASONS:

This Tribunal decides that the Government of the United States shall pay to the Government of His Britannic Majesty, the sum of One thousand five hundred and forty-four dollars (\$1,544.) on behalf of the Schooner *Jessie*, the sum of One thousand seven hundred and fifty dollars (\$1,750.) on behalf of the Schooner *Thomas F. Bayard*, and the sum of One thousand five hundred dollars (\$1,500.) on behalf of the Schooner *Pescawha*, in each case, without interest.

The President of the Tribunal,

(Signed) HENRI FROMAGEOT.

THE AGIENA¹*Belgian Council of Prizes, 1919*

In case No. 53, sailing vessel *Agiena*, the Council renders the following decision:

In view of the introductory petition presented by the Commissioner of the Government requesting that the capture of the sailing vessel *Agiena*, formerly belonging to H. J. Hill of Rotterdam, be declared legal and valid for the benefit of the Belgian State;

In view of the other documents incorporated into the pleadings;

Whereas, M. Bauss, attorney, enrolled in the list of attorneys of Antwerp, has presented himself for the following second party: [List of English underwriters omitted.]

Having heard the Commissioner of the Government, Van Gindertaelen, as well as the said M. Bauss, in their respective pleas and motions;

Whereas, the English underwriters, listed under the letters A, B, C, D, E, present themselves as having insured the ship *Agiena* against risks of war and total loss, and as being subrogated in all the rights of the Dutch owner, M. H. J. Hill, in consideration of having indemnified him for the said total loss;

Whereas, their intervention in the case is admissible;

Whereas, it is otherwise in the case of the English underwriters listed under the letters F to P who availed themselves of the subrogation in the rights of the *Eerste Hollandsche Vensterglasfabriek* relating to the insured merchandise;

Whereas, in fact the Commissioner of the Government sues only for the validation of the capture of the ship, and whereas, the cargo which has not been made the object of any capture on the part of the Belgian State, and over which no rightful claim arises, cannot give occasion for a decision by the Council;

Whereas, the intervention of the said English underwriters is henceforth nonadmissible;

In law:

Whereas, public international law is the sum total of the rules that have emanated from natural reason, consecrated by customs and treaties, which fixes the mutual relations of states in the general and public interest;

Whereas, if the natural law of nations, which finds its source in reason and conscience, should inspire positive law as an ideal toward which it must strive, it has no immediate and practical value and it cannot be reverted to except in default of treaties or usages resulting from the common consent of states; whereas, the sources of the positive law of nations can be summed up under the following two general heads: principal and

¹ Translated from the *Moniteur Belge*, 1920, p. 405.

direct sources comprising treaties and usages, and accessory and indirect sources comprising the legislation and jurisprudence of states and the doctrine of authors (Georges Bry, *Précis élémentaire de droit international public*, pp. 4, 6) ;

Whereas, it is accordingly quite indifferent whether the question in dispute is or is not covered by Belgian law, from the moment when it has been established that its solution can be derived from other sources of an equal, or a superior degree, of international law ;

Whereas, the circumstance that the Council should necessarily render judgment in accordance with the principles of this law and is not bound by national laws rather constitutes for the interested parties a guarantee of impartial justice ;

Whereas, it was not a sort of defiance toward the national prize court, which it instituted, that prompted the Belgian legislature to make possible an appeal, either determined or eventual, against the decisions of the former, but the intention of conforming to a usage universally followed by maritime nations as well as to the provisions of the Hague Convention relative to the establishment of an International Prize Court ;

Whereas, in the accomplishment of the mission devolving upon it, the Council could not have had any other concern than that of deciding in accordance with the rules of law and justice and of pronouncing its judgment with all the impartiality that may be expected of a Belgian tribunal, in validating prizes, if this measure becomes necessary, and, in the opposite case, in allotting to Belgium the legitimate advantage of a law which is justified by her victory and her sacrifices ;

Whereas, prize law belongs to that class of law which very ancient usages have consecrated as much as an international law recognized by all peoples ; whereas, this law has been maintained, save for certain restrictions, by numerous provisions, explicit or implicit, of the Hague Convention, although it had been the object, in the Conference, of spirited criticism, and although the delegates of the majority of the states had voted a proposition tending toward its abolition ;

Whereas, this extraordinary result is due to the preponderating intervention of the delegates of certain great maritime Powers who emphasized—and not without reason—counter to the apparently justified principles of law and equity invoked on the other hand, that in naval warfare things do not present themselves as in land warfare ; that the violent operations of war that are found there do not suffice in general to lead the adversary to conclude peace, and that it is, moreover, necessary for a belligerent to have the means of checking the economic life of his adversary by hindering or even suppressing his commerce with the outside world ; that since the seizure of enemy merchantmen can bring about this disturbance in the economic life of the country to which they belong, it appears henceforth as a powerful means of coercion and ultimately as a measure directed by

a belligerent state more against another belligerent state than against individuals, and which can contribute effectively to bring about a quick peace, to save many human lives, which are more precious than material goods. (Speech of Louis Renault in the Second Hague Conference of 1907.);

Whereas, it was necessary to recall these important considerations in order to avoid combating in the present litigation indirectly and unjustly the legitimacy of a system of law which, notwithstanding a different ideal to which civilized nations, it seems, ought to tend, forms an integral part of positive international law, and which can only be suppressed by virtue of an express provision consecrating the absolute inviolability of private property not only on sea but also on land;

Whereas, although it has not been codified, prize law is nevertheless governed by certain essential and precise rules upon which, whatever may be said thereof, an agreement has been reached between nations of maritime power, and which in spite of inevitable divergences of application, can serve as a basis of appreciation even for a nation deprived up to the present time of imposing naval forces and for the prize tribunal which the fortune of arms has permitted it to establish;

1. Whereas, one of these most essential rules lies in the fact that the decision of a prize tribunal which validates a capture has the effect of depriving the owner of his right of property over the enemy or neutral vessel, and of transferring this right to the state of the captor; whereas, the vessel changes thus in a legal way its flag and its nationality;

2. Whereas, a second principle, also quite certain and universally admitted, provides that it devolves only upon the prize tribunal of the country from which the captor originates, to the exclusion of every foreign jurisdiction, to adjudge the permissibility of the capture, and consequently to pronounce judgment upon the validity thereof;

Whereas, without doubt, such decisions are not absolutely irrevocable, and, after all, the fate of a ship captured by a belligerent depends eventually upon the conditions of the treaty of peace, but whereas it is none the less true that as long as the war continues these decisions preserve their legal validity and their character relating to the ownership, subject only to be eliminated by virtue of the conditions of peace;

3. Whereas, according to another principle which dominates all maritime prize law, every merchantman of enemy character can be legally captured unless covered by one of the cases restrictively determined by the Hague Convention or the Declaration of London, and which do not exist in the present instance;

Whereas, from these three rules, well determined and incontestable, there follows the consequence that no "recapture" or "recovery," in the sense and with the effects that are generally attached to such an operation in international law, can take place unless before the recapture of the vessel

a confiscatory sentence has been rendered by the prize tribunal of the enemy, such a sentence having the effect of depriving the owner definitively of his right. "Capture," says Georges Bry (p. 492, ff.), "has in the first place only a provisional and precarious character which in definitive law is transformed only by the judgment of the courts entrusted with pronouncing upon its validity. When the prize has been taken away from the captor after the seizure and *before the confiscation pronounced by sentence*, a 'recapture' takes place; this is the re-establishment of the previous state; the owner, whose ship was captured, recovers his property; the seizure is purely and simply annulled" (see in the same sense Wheaton, *Elements of International Law*, II, pp. 20 ff.; Despagnet, p. 665 and 666; Travers Twiss, pp. 324 ff.; Carlos Testa, p. 43; Pasquale Fiore, p. 521; De Pistoye and Duverdy, II, pp. 105 ff.; Calvo, V, Sec. 3198. See also *Revue de Droit International*, Vol. VII, p. 612; Report of M. Alberic Rolin to the Fifth Commission, *Institut de Droit International*, 1875, reproducing the corresponding opinions of Bluntschli and de Bulmerincq, as well as the Italian author, Schiattarella [on the recapture of neutral vessels].

Whereas, the recapture of a ship from the enemy after its condemnation in a prize court constitutes, therefore, in reality a new prize, having for its object a vessel of enemy character and not being able to admit the obligation of restoring it to the former owner;

Whereas, the words "recapture" and "recovery" are synonymous, and in former privateering warfare, today abolished, the expression "to pursue the recovery of a ship" meant to follow the vessel which had seized the ship, with the intention of capturing the former together with its prize, or at least of obliging it to abandon this prize, in depriving it thereof. (de Pistoye and Duverdy, *loc. cit.*);

Whereas, such an operation implied naturally and according to the principles formerly admitted, that the vessel should be recaptured within a period relatively close to the time of its capture, and particularly within a period of twenty-four hours, fixed by the then prevailing custom, in such a way that the ship might be considered as finding itself firmly in the possession of the captor after such a delay, and as having changed ownership; whereas, later it was required, in order to justify the assumption that the owner had been deprived of his right, that the vessel should have been escorted to safety by the captor in a port *infra proesidia*, and as the English prize decisions say: "Brought into a place so secure that the owner can have no immediate prospect of recovering it"; whereas, in the case of the *Santa Cruz*, judged in 1798, and relative to some allied Portuguese vessels captured by the French and recaptured by the English, the learned jurisconsult Sir W. Scott did not hesitate, from the point of view of theoretic principles, to consider the *deductio infra proesidia* as the true rule which, in his opinion, should decide the deprivation of the owner, although other nations, he added, may be far from agreeing on this point and may

be content to follow the twenty-four hour rule, or some other more rigorous rule of that nature; but, whereas, however that may be, "right of recapture" has undergone evolutions in the different countries, and from remote times up to our day there has never been any doubt, from the point of view of the principles of international law, that at least a confiscatory sentence of a prize tribunal should have the effect of depriving the owner of his right and should hinder the obligation of restitution in case of recapture from the enemy;

Whereas, this is the formal rule proclaimed by the United States of America in the Act of Congress of 1800, maintained in force since that time, and which is applicable in equal measure to the national or allied vessels recaptured from the enemy as it is to neutral vessels. (See Wheaton, *loc. cit.*);

Whereas, with regard to England, Article 40 of the Naval Prize Act of 1864 limits itself to stipulating the right to restitution for the benefit of British subjects, and whereas if this provision, which moreover reproduces similar provisions of earlier acts of Parliament going back to the year 1649, has been interpreted and applied in this sense, namely, that the right to restitution was acquired regardless of whether the recapture was effected before or after the condemnation of the vessel, it is in accordance with this that England intended to favor her national subjects with regard to the ever increasing development of commercial property; but, whereas, it could not result from this special law thus proclaimed by England for herself, and of a restrictive character, that subjects of allied or neutral Powers should be admitted to enjoy the benefits thereof to the whole extent to which it has been interpreted and applied;

Whereas, it is true, as Sir W. Scott said in the case of the *Santa Cruz*, "that the maritime law of England, having adopted a broader rule of restitution or of safety with regard to recaptured property of her subjects, grants the benefits of this rule to her allies as far as the point where they seem to act toward English property according to a less liberal principle, and in such a case she adopts their rule and treats them according to the measure of their justice." But, whereas, all this is only true in so far as no condemnation of the allied vessel by any enemy prize court has taken place, since the acts of Parliament have put into force again, as far as English subjects only are concerned, the *jus postliminii* of the original owner. (See Wheaton, *loc. cit.*, in this sense.);

Whereas, with regard to neutrals, the English courts have generally decreed the restitution in case of "recapture" properly so-called, even without indemnity, unless the vessel has been in danger of condemnation by the enemy, in which case indemnity was due; but, whereas, they have always considered that the recaptured vessel only had neutral character in the absence of a condemnation by the prize tribunal of the enemy, which legally brought about the deprivation of the owner and the change of

nationality of the ship. (Argument of Sir W. Scott in the case of the *Charlotte Caroline*, Prize Cases II, 149.)

Whereas, the legislation of other countries, such as Holland, Denmark, Spain, Sweden, and Portugal, has likewise undergone evolutions, but in every case within the limits indicated above, that is to say, that the owner was necessarily deprived of ownership by virtue of a sentence of condemnation;

Whereas, especially, when the Ordinance of March 28, 1810, returned the Danish property or the property of the allies of Denmark, without regard to the time that it had remained in the possession of the captor, upon payment of one-third of the value as salvage, the law of February 3, 1864, provided, on the contrary, that the Danish vessels recaptured from the enemy are considered as valid prizes;

Whereas, the Italian Code of Maritime Law, promulgated in 1865, established several distinctions which differentiated national or allied merchantmen recaptured by a privateer and such vessels recaptured by a man-of-war, according to which the latter must be restored to their owner without remuneration, even if they have already been taken to an enemy port; whereas, the same is true of a foreign vessel freighted on account of the state, but no mention is made of a foreign vessel not freighted on account of the state, from all of which it must be concluded that a neutral vessel as well as a national or allied vessel whose ownership has passed over into the hands of the belligerent by virtue of a judgment should not be restored in case of recapture;

Whereas, in France the Decree of Prairial of the Year XI is applicable to French or allied vessels, to the exclusion of neutral vessels; whereas, with regard to the former there is no proof that it has had the effect of derogating from the universally admitted principle which provides that a confiscatory sentence pronounced by the competent prize tribunal effects a change of character of the vessel; whereas, the repeal of the twenty-four-hour rule proves moreover that it has not been possible to consider an effective recapture after a rather long lapse of time such as is generally supposed by the formalities and the prize procedure according to the regulations in force; whereas, the neutral vessels that are recovered should be restored according to the principles of international law, but whereas, on the other hand, the reason which compelled their restitution disappeared in case of recapture after condemnation by the prize tribunal of the enemy;

Whereas, in the case of the privateer *Le Hasard* v. *The Statira*, M. Portalis, Commissioner of the Government, expressed himself as follows under the guidance of the Decree of Prairial: "If we are dealing, on the contrary, with a foreign vessel claiming to be neutral, the arrest of this vessel by the enemy does not render it suddenly enemy property, since its confiscation cannot be pronounced by the magistrate. *Until the confiscatory judgment the ship sailing as a neutral loses neither its character nor*

its rights. After the arrest it can recover its liberty. *In such a case* the recovery of this vessel could not, therefore, bring about the transfer of ownership into French hands by which this recovery was operated. The question of neutrality always remains entire; it should be decided before everything. Such is the language of all the publicists, such is the custom of all the civilized nations. This being admitted, the ship *Statira* has not become confiscable *by the fact alone* that she was recovered from the enemy" (de Pistoye and Duverdy, II, p. 123);

Whereas, it was apparently due to these so judicious and juridical observations that in the course of the recent war of 1914-1918 the instruction of the Minister of Marine of January 30, 1916, was rendered in so far as it dealt with "recovery"; whereas in speaking of French or allied vessels captured by the enemy "you will strive to effect their recovery," and furthermore of the neutral vessels recovered "you will release them purely and simply," these instructions show that we are not dealing with a recapture after a capture of firm possession on the part of the enemy and a sentence of condemnation by one of its prize tribunals, but of a ship which remained legally and apparently neutral according to international law and the distinguishing signs which should cause it to be recognized as such;

Whereas, quite similarly to the Hague Convention, the Declaration of London recognized in several of its provisions and particularly in its Articles 41, 48 and 66, the legality of national prize jurisdiction, and whereas, it would be a fruitless question if we were to inquire into the *raison d'être* of these provisions if the effects of a sentence of condemnation were not to be imposed upon all with the same authority, belligerents as well as neutrals, the latter having to submit thereto by virtue of the necessity of war; whereas, it cannot be seen moreover how it would logically be possible to admit the effects of such a sentence in the relations between the captor and the captured, and to refuse to apply them in the relations between the captured and a recaptor;

Whereas, Article 57 of the Declaration of London provides that the neutral or enemy character of the vessel is determined by the flag which it is entitled to fly; whereas, after a confiscatory sentence pronounced by the prize tribunal of a belligerent, the flag which an enemy or neutral vessel is entitled to fly is that of the belligerent who has made the capture, and this legal change of flag renders the vessel confiscable on the part of the opposing belligerent, as an enemy vessel; whereas, it follows from the preceding considerations that according to the spirit of the international treaties and according to modern usage adopted by all nations, the decision which validates a prize fixes in a definite manner the juridical fact of the deprivation of the owner, the cause of the right of the recaptor, and that while admitting that according to the countries and the cases given, it may have been possible to make varying applications of this principle, it de-

volves upon the council to adhere purely and simply to the American Law and to derive therefrom the sole logical consequence which it admits, namely, the absence of the obligation of restoration in case of recapture of a neutral or allied vessel;

Whereas, the English underwriters maintain, unjustly, that it is not possible to attach any value to the decision of the German prize jurisdiction for the reason that the capture in question was only an act of piracy violating the rights of neutrals and the Declaration of London to which Germany has adhered;

Whereas, if it were necessary, in the present case, to investigate whether the German decision was or was not rendered in conformity with the rules of international law and of the Declaration of London, it would be in order to observe that in fact the latter Declaration has not been perfectly respected by any of the belligerents; whereas, the Allied Powers have been forced by the attitude and the unjustifiable methods of war of Germany to make modifications thereof in conformity with their most essential interests, particularly with regard to the specification of articles of absolute or conditional contraband; whereas, Germany has, on her part, made modifications of the Declaration touching the same point, and, whereas, thus the belligerents have released themselves mutually and in a tacit manner from their reciprocal obligations in this respect, in such a way that the violation of these obligations cannot be charged against them; whereas, the neutrals have moreover been warned by the notifications of decrees of the various belligerents of the fact that they would no longer be able to count upon the integral execution of the Declaration of London with regard to the limitation of articles of contraband, and whereas, they have, nevertheless, and at their own risk, undertaken maritime expeditions involving the prohibited goods; whereas, international law admits, moreover, that a belligerent, with a view to safeguarding his interests, which he considers essential, exercises a certain pressure upon neutrals in reducing their commercial relations with the outside world, and the loss which results for them therefrom is amply compensated for by the enormous advantages which after all their commerce secures for them in time of war (Clunet, *Journal de Droit International*, 1919, 1st and 2d books);

Whereas, in reality, the prohibition resulting from Article 28 of the Declaration, interdicting the treating of window glass as contraband, with which the present litigation deals, did not touch the substance of international law as other stipulations contained in the Declaration, and which are only the reproduction of certain rules of this law already recognized in their broad outlines by the customs of the nations; whereas, an infraction of such a prohibition, purely conventional and more or less arbitrary, does not appear to have assumed in the mind of the belligerents any more than in the mind of the neutrals, who are forced to accept it, the character of a violation of a principle or of an essential rule of international law;

But, whereas, under any hypothesis, the jurisdiction of the court of the nation which has made the capture is conclusive on the question of ownership of the captured property; whereas, its decision terminates every controversy relative to the validity of the capture between the claimant and him who has made the capture and those who claim after them that this sentence terminates every juridical question on the matter; whereas, if the violation of international law has been committed by a prize tribunal, it follows therefrom solely that the state which has instituted the tribunal and which is supposed to have given the latter its instructions, in conformity with Article 66 of the Declaration of London, is responsible by reason of such a violation, but not that it should be permitted to open again for discussion, either with regard to the captor or a recaptor, the question of ownership definitively decided by the competent tribunal or the validity of its decision (Wheaton and Georges Bry, *loc. cit.*);

Whereas, the Belgian State, in availing itself of the German prize decision, could not incur the reproach of wishing to sanction a violation of international law committed by the enemy; whereas, it limits itself to claiming the use of a right based upon the success of the military operations of its army and to desiring to derive the legal consequences from a situation which it has not created and with the justification of which it should not interfere;

Whereas, it is true, the final fate of the enemy prizes could depend upon the conditions of the intervening treaty of peace; whereas, it must be remarked that Article 440 of the Treaty of Versailles, in so far as it permits the revision by the Allied Governments of the decisions rendered by the German prize tribunals, is directed against Germany, in so far as the latter has preserved the possession of certain ships unjustly captured and declared by its tribunals to be good prizes and which could, as a result of a revision of the sentence, be detached from the lot of those ships that are to be returned to the Allied and Associated Powers in execution of the stipulations of the Treaty of Peace, for the purpose of being restored to the prejudiced neutral or allied subjects; whereas, this provision does not aim to do an injustice to one of the Allied Powers in depriving it of the benefits of a recapture based on a German prize decision.

In fact:

Whereas, on July 12, 1917, the sailing vessel *Agiena*, flying the Dutch flag and bound from Maassluis to Havre with a cargo composed especially of cases of window glass, was seized as a prize in the North Sea by German hydroplanes and taken by a torpedo boat to Zeebrugge, and from there to the interior port of Bruges, where it was chartered by the Netherlands firm Gist en Spiritus Fabriek for voyages between Bruges and Brussels;

Whereas, it follows from the documents in the dossier that the vessel was declared a good prize by a decision of the Hamburg Court rendered under date of November 16, 1917;

Whereas, it follows therefrom, as well as from the considerations made above, that the *Agiena* became a German vessel and that it was subject to capture when, on October 19, 1918, the Belgian troops captured it in the port of Bruges;

Whereas, while admitting, in default of greater precision on the part of the dossier, that the vessel was condemned on account of carrying contraband of war, notwithstanding Article 28 of the Declaration of London which forbade the treatment of glassware as such, the decision of the German prize jurisdiction is nevertheless possessed of a legal force imposing itself upon all and of such a nature as to form the basis of the right of capture of the Belgian State;

Whereas, it is true, the English underwriters in the case maintained, with documents in support thereof, that on July 23rd and 26th, 1917, that is to say, between the date of capture and that of the decision of the prize tribunal, they insured the hull of the ship for the benefit of the Dutch owner and that as a result of the payment of the indemnity by them for the total prize they have become subrogated to his rights with the consequence that the ship had become their property and was considered to be flying the English flag at the date of its recapture from the enemy;

But, whereas, this circumstance could not have the effect of modifying the juridical situation resulting from the German prize decision;

Whereas, in principle, the said underwriters could not have, with regard to the recaptor, more rights than the previous Dutch owner had, deprived of every remedy against the former; whereas, it is indifferent that the date of their title antedates that of the judgment validating the prize; whereas, the ship was captured and judged as a neutral vessel having infringed upon the rules of neutrality; and, whereas, it was recaptured as an enemy and neutral vessel before its original capture, the latter alone having to be considered in the present case;

Whereas, to admit a contrary solution would result in permitting the evasion of the consequences of the previously neutral character of the vessel in case it would be in order to treat differently neutral vessels and allied ships recaptured from the enemy;

But, whereas, as it has been shown, no difference is to be made between the two cases and restitution of the ship is not in order no matter what point of view is taken;

Whereas, it follows from these considerations that the recapture of the ship *Agiena* by the Belgian troops is permissible and valid with respect to the English underwriters in the case; that it would have been declared thus also with regard to the firm Nederlandsche Gist en Spiritus Fabriek, which, it is alleged, purchased the ship at the German prize office under date of October 5, 1918, that is to say, at the time when, given the military situation, there was reason to fear that the vessel would come into the hands of the Allies, and therefore, with the manifest object on the part of

the German authorities to evade the consequences of the enemy character of the vessel, and hence under such conditions that the transfer to a neutral flag must be considered void according to the incontestable principles of international law, confirmed by Article 56 of the Declaration of London;

FOR THESE REASONS:

The Council having heard the Commissioner of the Government, Van Gindertaelen, in his pertinent motions, rejecting all contrary claims as unfounded, declares inadmissible the intervention of the English underwriters listed under the letters F to P, and acknowledging to the English underwriters listed under letters A to E the fact that they estimate the litigation for each of them at more than 20,000 francs, declares legal and valid the capture of the sailing vessel *Agiena*, and decrees that this vessel shall belong in its totality to the Belgian State. Expenses as in law.

THE BRUSSELS¹

Belgian Council of Prizes

Antwerp, October 23, 1919

In case No. 46, *S.S. Brussels*, the Council renders the following decision:

In view of the introductory petition presented by the Commissioner of the Government requesting that the capture of the steamer *Brussels*, of about 1380 tons, formerly belonging to the Great Eastern Railway Company, whose offices are at Harwich, be declared effective and valid for the benefit of the Belgian State;

In view of the other documents incorporated into the pleadings;

Having heard the Commissioner of the Government Van Gindertaelen in his reasons and motions;

Whereas, the steamer *Brussels*, flying the English flag and commanded by the late Captain Fryatt, was captured on the high seas by the German naval forces and taken to Zeebrugge; whereas, it was declared a legal prize by the decision of the Prize Court of Hamburg on November 15, 1916, confirmed by the Superior Prize Court at Berlin on July 29, 1917;

Whereas, it follows therefrom that the ship had become German property and that, according to the principles of the law of nations, it was subject to seizure when, in the month of October, 1918, the victorious Belgian troops captured it in the port of Zeebrugge, where it was sunk by the enemy;

Whereas, no objection could be made that, forming the subject of the recapture of an allied ship, this ship should, according to international

¹ Translated from the *Moniteur Belge*, Nov. 6, 1919, p. 5894.

customs, have been restored to its former owner; whereas, in the first place, there does not exist any general usage, and even to a less degree any written international rule, binding the recaptor to restitution in such a case; whereas, the Hague Convention is silent on this subject; whereas, as the judgments of this court, dated October 17, 1919, in the case of the *S.S. Midsland* and *Gelderland*, declared, England herself has never admitted the restitution of an allied or neutral ship recovered from the enemy, except under the condition of reciprocity; whereas, in fact, no treaty of reciprocity exists on this subject between Great Britain and Belgium;

But, whereas, moreover, as appears from the same decisions, the recapture or recovery, with the rights and obligations which certain publicists of international law attach thereto, is possible only if no judgment validating the original prize has been rendered; whereas, in case of the existence of such a judgment, we are dealing with a new prize which is governed with respect to all neutrals as well as allies, by the ordinary rules, and which admits of no restriction upon the absolute rights of the captor;

Whereas, moreover, in every prize case there is a governmental phase in which the captor state may decide it opportune to act in a spirit of generosity toward an allied or neutral Power, and a contentious phase such as that in the present instance, in which the Prize Court vested with the litigation by the government of the captor state, has only to decide whether the prize was legitimately made according to the rules of international law;

Whereas, regardless of the regret that a Belgian prize court may feel in being compelled to retain an allied ship which has distinguished itself in the struggle against the common enemy, it could not, in the given case, allow itself to be guided by any other principles than those of the law, tempered according to the circumstances by justice, without deviating from its course of duty;

And, whereas, even if no judgment had been pronounced validating the German prize or if that prize were considered as not having been validly adjudged by the competent tribunal, the Belgian State would not in any less degree have derived as a result of the acts of the German authorities with regard to the ship a title to the prize in the juridical sense of the term, than it would have done later;

Whereas, in fact, as was found in the aforementioned judgments in the case of the *Midsland* and the *Gelderland*, the *Brussels* was sunk by the German naval authorities somewhat to the right and a little to this side of the head of the mole of Zeebrugge, that is with the manifest object of obstructing the passage to the sea; whereas, moreover, the aforementioned authorities have caused twelve other ships to be sunk, either in the channel of approach to the sluice or in the floating docks of the ports of Brugge; whereas, all these operations formed an indivisible and systematically concerted unit with the double intention of bottling up the ports of Bruges,

already obstructed as a result of the heroic act of war of the British navy, and of hindering the Allied Powers from taking possession of these ships in order to use them for the transportation of troops, and material of war, or of provisions for the use of their army; whereas, the German authorities have thus acted for a clearly determined military and defensive object;

Whereas, in sinking the *Brussels* under the aforementioned conditions and after a detention of more than one year, these authorities have committed with regard to the ship an act of appropriation *jure belli*, characterized and definitive in such a way that with regard to the hostile belligerent, the Belgian State, which has captured the ship subsequently, this ship can and should be considered for this very reason as an enemy ship and of such a nature as to form a basis for the intrinsic right of the captor; whereas, only an eventual right to indemnity for the benefit of the injured private individual and against the German State by reason of such destruction, committed in the absence of any case of actual *force majeure*, is in order;

For these reasons:

The Council, having heard the Commissioner of the Government, Van Gindertaelen, in his pertinent motions and rendering judgment in the absence of all other interested parties, declares the capture of the steamer *Brussels* effective and valid for the benefit of the Belgian State, and decrees, consequently, that this steamer shall belong in its totality to the latter. Expenses as in law.

THE GELDERLAND¹

Belgian Council of Prizes

Antwerp, October 17, 1919

In case No. 44, *S.S. Gelderland*, the Council renders the following decision:

In view of the introductory petition presented by the Commissioner of the Government requesting that the capture of the steamer *Gelderland*, formerly belonging to the Stoomvaart Maatschappij Nederlandsche Lloyd, whose offices are at Rotterdam, be declared effective and valid for the benefit of the Belgian State;

In view of the other documents incorporated into the pleadings;

Having heard the Commissioner of the Government Van Gindertaelen, as well as the said company, represented by M. Georges Vaes, advocate at Antwerp, in their respective reasons and motions;

Whereas, the steamer *Gelderland*, flying the Dutch flag, was captured on July 23, 1917, on the high seas, by a German aeroplane, while it was

¹ Translated from the *Moniteur Belge*, 1919, p. 5772.

sailing from Newcastle to Rotterdam with a cargo of coal, because it was suspected of transporting contraband of war; whereas, being conducted to Zeebrugge, it was declared a valid prize by the Prize Court of Hamburg on May 31, 1918, and whereas, it was captured subsequently, in October, 1918, by the Belgian troops in a floating dock in the port of Zeebrugge, where it was sunk by the enemy;

Whereas, the judgment of the Prize Court has had the effect of transferring the ownership of the vessel in question to the German State, in conformity with the principles of international law and of German legislation; whereas, recourse against such a decision is not a bar to subsequent proceedings and the decision to be rendered on the appeal simply relates to or determines *ex nunc* the right of ownership;

Whereas, accordingly, the vessel captured by the Belgian troops when they seized the *Gelderland* in the waters of Zeebrugge, was an enemy vessel;

Whereas, although it is true that the capture did not effect a transfer of property, it did not to any less degree present an obstacle to the regularity of any subsequent decision of a German prize court pronouncing the liberation of the vessel; whereas, the military and naval situation of the German Empire was such that the vessel had to be considered as being definitively in the power of the Allies;

Whereas, the decision of the Supreme Prize Court of Berlin, rendered on October 24, 1918, on the appeal introduced by the interested company, which freed the vessel, is accordingly inoperative and only the Hamburg decision validating the prize remains effective;

Whereas, moreover, the act on the part of the German authorities in sinking the vessel without awaiting the result of the appeal from this decision, constituted a new and absolute bar to the subsequent possibility of the rendition of a decision by the Court of Appeals for any other purpose than to permit the interested company to claim damages from the German state; whereas, matters were no longer complete and the German Empire, having availed itself of an act of force in order to affirm its right of ownership over the vessel, had lost the right of recourse to prize procedure in order to have this right recognized or invalidated;

Whereas, it is certainly not permissible to maintain that because the capture was based upon a simple attack and an act of force, the effects thereof would be annulled by the loss of possession of the ship, which thenceforth would have to be restored to its original owner;

Whereas, in fact, in the present case the effects of the German capture have only been set aside with regard to the dispossessed enemy, and, whereas, they have not in any less degree constituted the basis of the right of the new captor, the Belgian State, without the original proprietor having been able to derive from the mere fact of dispossession a right to the restitution of his lost property;

Whereas, the act of force, namely, the maritime capture, engenders rights which are recognized by international usage and which the prize jurisdictions have the right to sanction legally; whereas in default of a decision invalidating the prize, force alone can finally annul the effects thereof;

Whereas, the decisions originating with the prize tribunals of a belligerent, when they have been rendered regularly, and when they do not violate the essential rules of the law of nations, can thenceforth serve as a basis for the creation of new laws for the benefit of the opposing belligerent and to the detriment of a subject of a neutral power; whereas, it does not devolve upon the latter to criticize such decisions for other reasons when the new captor accepts them and has an interest in availing himself thereof; whereas, the *Gelderland* was declared a valid prize by the Hamburg tribunal for the reason that it had sailed for the purpose of serving the maritime interests of the enemy and that it had been covered by an enemy charter;

Whereas, in the absence of an international agreement on this subject, the Prize Court of Hamburg has in the present case only made use of its right of interpreting and applying, within the limits of its competence, the national laws of its country, and, it has not thenceforth violated any principle whatsoever of the law of nations;

Whereas, the *Stoomvaart Maatschappij Nederlandsche Lloyd* appeals in vain to article 440 of the Treaty of Peace, which stipulates that the Allied and Associated Powers reserve the right to examine, in such manner as they may determine, the decisions and decrees of German prize courts, whether affecting the property rights of nationals of those Powers or of neutral Powers.

Whereas, in that case we are dealing with a condition imposed upon Germany and relative to the ships and cargoes captured by her but not recaptured by the Allies, and, whereas, the intention does not in any way exist to trace to the prize tribunals of the Allied Powers the obligation of controlling the German decisions which might be favorable to them in so far as they form the basis of their own rights, or of those of their nationals; whereas, moreover, the Belgian Government has not up to the present time availed itself of the privilege reserved to it by Article 440, and, whereas, if it should eventually exercise the privilege, the revision of the German decisions would doubtless take place by way of governmental and diplomatic action, and not through the medium of the prize courts, organized for the purpose of passing judgment on the validity of the prizes made by the Allies; whereas, the *Stoomvaart Maatschappij Nederlandsche Lloyd* maintains finally that the *Gelderland* was captured and seized for having rendered services to the Allies, and, whereas, it is a principle that in such a case the recaptured vessel should be restored to the neutral owner; whereas, the interested firm, as well as its sister firm the *Scheepvaart en*

Kolenmaatschappij of Rotterdam, appears to have had principally in mind not to render service to the Allies, but to look to its commercial interests by assuring the supply to Holland of English coal, the exportation of which the British Government authorized to neutral countries only in consideration of the corresponding importation of a certain quantity of goods destined for its own country, but whereas, even supposing that the *Gelderland* had been captured while in the service to the Allies, this circumstance would in itself, not be of such a nature in the present state of legislation or of international usages, to bind the Belgian State to release the prize;

Whereas, according to the doctrine of certain authors and early French jurisprudence, in case of recovery of a neutral ship, if the original prize has been declared valid according to the laws of the enemy country, the neutral no longer had any basis for a claim, since by the effect of the prize he lost his property in the ship, and the ship was adjudged to the captor; whereas, exception was made to this rule only if the neutral ship destined for a French port had been seized by the enemy solely because of the contraband articles or other effects that it was carrying (See Dalloz, *Répert. V., Prizes Maritimes*, No. 198, and De Pistoye-Duverdy II., p. 120);

Whereas, this exceptional concession to the rights of neutrals was far from being recognized by the other maritime countries; whereas England has never admitted this concession, either for allied property or for neutral property, except under condition of reciprocity, and upon payment of one-eighth of the value as salvage (Naval Prize Act of 1864); and, whereas, with regard to Holland, in spite of a reciprocity agreement concluded with England some years before, she refused in 1748 to admit this restriction, of the right of recovery of its privateers, however legitimate it might be, whereas, when an English vessel, the *Lydia*, after having been captured by a French privateer, was recaptured by a Dutch vessel and escorted to Zierikzee, and was reclaimed by England, the States General replied that the recapture belonged *jure belli* to the recaptors (Martens, *Armat.* 163 and note);

Whereas, France herself subsequently abandoned every idea of obligatory concession, and in 1870 gave absolute instructions which comprised only a slight restriction on the right of recapture: "The recovery of a national vessel," it is said, "will not form the basis of any right over the recaptured vessel. If the recaptured vessel is a neutral it will be seized as an enemy, if it has remained in the possession of the enemy more than twenty-four hours. If the vessel has not remained in the possession of the enemy for twenty-four hours, it will be released purely and simply." (Georges Féron, Paris, Doctoral Thesis on the Right of Maritime Capture, p. 106);

Whereas, although it is true that these instructions add to the statement of the rule of the right of recapture the words: "Save for exceptional circumstances, the application of which His Majesty reserves," we are deal-

ing there only with the part left to the initiative of the Government which can always be exercised relative to the seasonableness of the capture and under the form of restitution freely consented to, and in no respect with a latitude given to the tribunals called upon to pass judgment on the validity of the prizes, which have only to investigate whether the prize is legal according to the principles of international law;

But, whereas, moreover, the distinctions and restrictions in question above did not have any reason for existence and only found their justification very frequently in former privateering warfare, in which the vessel was captured without the original prize having been declared valid by the prize court of the enemy; whereas, if, on the other hand, such a judgment of validity had been rendered, the term "recapture" or "recovery" could not be properly used and the prize was a new one which was governed with respect to all, neutrals as well as allies, by the original rules;

Whereas, as Calvo in his *Droit International*, 5th edition, 1896, Vol. 5, paragraph 3198, states: "The principles generally admitted by the legislation of the chief maritime nations are as follows: *Recapture is possible only if the prize has not yet been adjudged*; until a tribunal has rendered judgment, the fate of the prize is uncertain; neither the captor nor the Government to which he is subject have any rights over the vessel or over its cargo, and as the prize depends only upon the right of the stronger, it can be annulled by force; the recapture can, therefore, by special application of the *jus postliminium* annul the original capture. But once a judgment has been pronounced, the prize becomes legally the property of him to whom it has been awarded; and if the ship is later captured by the enemy, it is just as if we were dealing with a *new prize*. Yet the recapture (that is, in the absence of every judgment), does not confer upon the recaptor the rights of the captor; it has effects which are essentially negative. The recaptor is bound to respect the goods which he has saved from the hands of the enemy, except that he is entitled to claim for his troubles and his losses a remuneration, the amount of which varies according to the particular legislation of the various countries on this point."

"If the case, however, be that of a foreign vessel, asserted to be neutral," Wheaton says in his *Elements of International Law*, vol. 2, "the seizure of this vessel by the enemy does not render it *ipso facto* the property of the enemy, *since its confiscation has not yet been pronounced by the competent judge*. Until that judgment has been pronounced, the vessel thus navigating under the neutral flag loses neither its national character nor its rights; although it has been seized as prize of war, it may ultimately be restored to the original owner. Under such circumstances, the recapture of this vessel cannot transfer the property to the recaptor. It followed that the vessel in question was not confiscable by the mere fact of its having

been captured by the enemy. Before such a sentence could be pronounced, the French tribunal must do *what the enemy's tribunal would have done*: it must determine the question of neutrality, and that being determined in favor of the claimant, restitution would follow of course." And, moreover, the same author, in order to justify a right of recovery in case of actual recapture added simply: "These violations of the ancient law of nations, committed in the course of the last European War (1870), in many cases made of the release of neutral property from their cruisers and *from their Prize Courts* (that is, before they had been adjudicated), a great service entitling to a remuneration in the form of a right of recovery to him who had effected the recapture of this property."

Whereas, therefore, no international usages exist in the sense of the thesis maintained by the *Stoomvaart Maatschappij Nederlandsche Lloyd*; whereas, the necessities of modern warfare appear to have hindered up to the present the conclusion of an international convention prescribing in an absolute manner and even when no judgment has been rendered validating the prize, the restitution of every private vessel and especially of every neutral vessel captured in time of war by a belligerent and recaptured by the other belligerent;

Whereas, in this regard, the international regulations on maritime prizes, formulated by the Institute of International Law in 1887, were not reproduced by The Hague Convention, in which the contracting Powers have, however, stipulated the restrictions which they have deemed it necessary to make upon the right of capture of enemy merchantmen, as well as the rights and duties of neutrals, and which do not include any exception relative to the right of recapture of neutral vessels; whereas, the general principle, whose existence the said convention implicitly recognizes for the benefit of the belligerents, remains thenceforth applicable to the case in hand;

Whereas, it has, therefore, been established that the *Gelderland*, at the time when it became the object of the Belgian capture, was German property, and, therefore, liable to be legally confiscated, and, whereas, the original neutral owner is not entitled to the restitution of the ship;

And, whereas, moreover, the German naval authorities have caused not only the *Gelderland*, but also twelve other ships to be sunk in the ports of Bruges or their appurtenances; whereas, one of these thirteen ships, namely, the *S.S. Brussels*, was sunk somewhat to the right and a little to this side of the head of the mole of Zeebrugge, another in the channel of approach to the sluice, and the others in the docks of the ports of Bruges and of Zeebrugge; whereas, these operations, which formed an indivisible and systematically concerted single act, had the manifest object of effecting the bottling up of the ports of Bruges, already notably obstructed as a result of the heroic act of war of the British navy, and of hindering the

Allied Powers from seizing these ships about to fall into their hands, in order to use them for the transportation of troops and material of war, or of provisions for the use of their armies; whereas, the German authorities have, thenceforth, acted for a clearly determined military and defensive purpose;

Whereas, in sinking the *Gelderland* under these conditions after a detention of almost two years, the German naval authorities have committed an act of appropriation *jure belli*, characterized and definitive in such a way that if, hypothetically, a regular decision had not been rendered previously, validating the prize, such an act would have taken the place thereof with regard to the recaptor, the Belgian State, and that in every case this act permitted the latter to seize in its turn and to use against the enemy material which the latter had transformed into an instrument of war for his defense;

Whereas, even if it is freely granted that prior to the destruction, the original neutral owner of the ship had remained the legitimate owner, he would then have only a claim for indemnity against the German State by reason of the arbitrary and illegal acts of the agents of the latter;

Whereas, having regard to the principles of international law, such destructions, committed by an enemy driven back to defeat, and without any case of actual *force majeure*, must be condemned, but, whereas, it is no less certain that according to the rules which govern land warfare and *a fortiori* maritime warfare, the Belgian State is justified in capturing a vessel which the enemy has treated in the most characteristic way as his own property for the organization of his defense and in pledging eventually his responsibility on the basis of a pecuniary compensation toward the interested third party;

Whereas, moreover, no argument could be based upon the conditions of the armistice ordering the liberation of the neutral ships seized by the Germans in the Black Sea, since the latter were not captured by the Allies, as the *Gelderland* was, at the time when the armistice intervened;

FOR THESE REASONS:

The Council, having heard the Commissioner of the Government, Van Gindertaelen, in his pertinent motions, rejecting all contrary claims as unfounded, and attesting that the Stoomvaart Maatschappij Nederlands Lloyd estimates the litigation at one million francs from the point of view of competence, declares effective and valid the capture of the steamer *Gelderland*, and decrees that it will belong in its totality to the Belgian State. Expense as in law.

THE ROELFINA¹*Belgian Council of Prizes, 1919*

In case No. 54, sailing vessel *Roelfina*, the Council renders the following decision:

In view of the introductory petition presented by the Commissioner of the Government requesting that the capture of the sailing vessel *Roelfina*, of about 148 tons, formerly belonging to the firm Spliethof P. A. A. de Jonge of Rotterdam, be declared legal and valid for the benefit of the Belgian State;

In view of the other documents incorporated into the pleadings;

Whereas, M. Gaston Verougstraete, attorney, enrolled in the list of attorneys of Bruges, has presented himself in the name of the incorporated firm Nederlandsche Gist en Spiritus Fabriek;

Having heard the Assistant Commissioner of the Government, De Vos, as well as the said M. Verougstraete, in their respective pleas and motions;

Whereas, the sailing vessel *Roelfina*, flying a Dutch flag, was captured on July 4, 1917, on the high seas by a German submarine and escorted to the port of Bruges, and, whereas, it was declared a good prize by a judgment of the Prize Court of Hamburg;

Whereas, it follows therefrom that by virtue of a regular decision relating to the ownership and the flag, the vessel had become an enemy vessel and as such in principle subject to capture on the part of the Allied Powers from the moment when this decision intervened;

1. With regard to the claims of the Nederlandsche Gist en Spiritus Fabriek;

Whereas, this firm, of Dutch nationality, having its offices at Delft and a branch at Bruges, maintains that it has become the legitimate owner of the *Roelfina* by reason of having purchased the ship under date of October 12, 1918, from the German State, through the mediation of the delegated official of the Navy for prize matters, in consideration of the price of 13,000 marks, paid by it under the condition that according to it the absolute correctness of its acquisition should not be placed in doubt; whereas, it declares in effect that it has acted above everything in the interest of the Dutch shipowner Spliethof P. A. A. de Jonge of Rotterdam, dispossessed by the German authority, and to whom it proposed to offer the retrocession of the vessel at cost price without any profit for it; whereas, since the above-mentioned shipowner did not accept this offer, it remained the owner and in possession of the ship;

Whereas, while granting freely that the Nederlansche Gist en Spiritus Fabriek was led to make this acquisition for the disinterested motive that it alleges, while, however, nothing could lead it to believe that the Dutch shipowner would have agreed to run the risks of a repurchase, and while

¹ Translated from the *Moniteur Belge*, 1920, p. 403.

it has been admitted that the German authorities took the initiative in proceeding to the sale of the ship, still the alleged motive, should it be established, would be insufficient to give the intervening operation the character of validity required by international law.

Whereas, in fact, according to a principle which has always been universally admitted by all maritime nations, the transfer in time of war of an enemy vessel to a neutral flag is null in every case when it appears that the transfer was effected with a view to evading the consequences to which the enemy vessel would have been exposed by the action of a belligerent;

Whereas, in the case of the *Jan Frederik* (1801, 5 C. Rob. 128, 1 English P. C., 434), Lord Stowell, considering, it is true, especially transfer *in transitu* not followed by delivery, said: "As I have already observed, it has been decided in two or three cases that a transfer can take place *in transitu* when there is no actual state of war nor any perspective of war involved in the transaction of the parties; but in time of war it is prohibited as a vitiated contract, because it involves a fraud with regard to the rights of the belligerents not only in the particular transaction but in the general opportunity that it necessarily introduces of evading these rights without possibility of being discovered. It is a path which in time of war should be closed, for although honest people might be called to enter upon it with the most innocent intentions, the greater part of those who use it would do so only with sinister intentions and with a view of committing a fraud in regard to the rights of the belligerents"; whereas, it is quite clear that the same motives can be applied to other nations and especially to the case of a ship finding itself in a blockaded port, and these motives have in fact led to the same solution admitted in international law, that is to say, the absolute presumption of nullity of transfer.

"If the state of war or even the simple probability of war", Lord Stowell again says with regard to a transfer *in transitu* before the opening of hostilities, "leads immediately to the transfer or becomes the basis of a contract which would otherwise not have been entered upon by the vendor, and if it is known that this is the case in the mind of the purchaser, although with regard to him there could also be other concurrent motives, such a contract cannot be held valid, according to the same principle which invalidates a transfer *in transitu* in time of war. The nature of the contracts is identically the same, each of them aiming to protect property against capture in war, not, to be sure, against capture at the time when the contract was made but against the danger of capture when it is probable that this capture will take place. The object is the same in each case, namely, to secure a guarantee against the same cause, in other words, the two contracts were closed for the same purpose, that is to evade a right of the belligerent, present or eventual. The two contracts are both

closed *animo fraudandi* and are, in my opinion, rightfully subject to the same rule." (The war of 1914, British Naval Prize Jurisprudence, pp. 20 and 31.)

Whereas, the Declaration of London has adopted in substance the views of international law with regard to transfer, effected in time of war, of an enemy vessel to a neutral flag, such as have just been set forth, namely, that such a transfer is presumed to be null and that it devolves upon him who invokes it to disprove this presumption;

Whereas, Article 56 provides in fact: "The transfer of an enemy vessel to a neutral flag, effected after the outbreak of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed."

Whereas, in the present case not only the Nederlandsche Gist en Spiritus Fabriek has not furnished the proof which devolves upon it, but, whereas, it appears, on the contrary, that the transfer was effected with the manifest object of avoiding the danger of capture to which the *Roelfina* found itself exposed on the part of the military forces of the Allies while remaining in the waters of Bruges under the German flag, and as a result with a view to evading the consequences which its character as an enemy vessel might bring with it;

Whereas, on October 12, 1918, on which date the German State sold the ship to the Dutch firm, the general military situation, characterized especially by the breaking of the Cambrai—St. Quentin Front, was such that the German military authorities had to consider as probable the evacuation of Flanders and of the Belgian coast, which fact was moreover realized less than a week later as a result of the victorious offensive of the Franco-Belgian troops;

Whereas, the Nederlandsche Gist en Spiritus Fabriek in any case got a clear conception of the immediate motive which led the German authorities to sell the vessel to it, namely, because these authorities would without doubt have experienced difficulty in evacuating the interior waters in due time, and whereas thus, setting aside a concurrent motive which could moreover have guided the said firm and which is irrelevant in the present case, this firm found itself in agreement with the vendor in committing this fraud with respect to the rights of a belligerent, condemned both by international law and the Declaration of London;

Whereas, it was apparently because the said firm took into account the risk of its operation that it paid for the acquisition of the sailing vessel a price of only 13,000 marks, while this vessel was insured before its capture for the amount of 57,840 francs and after its acquisition the firm on its part insured it to the amount of 51,000 francs;

Whereas, according to the provisions of Article 56 of the Declaration of London the absolute presumption of the nullity of the transfer of flag exists if this transfer was effected in a blockaded port;

Whereas, the blockade may extend to the ports and coasts occupied by the enemy (Art. 1) ; whereas, it must be effective, that is to say, maintained by a force sufficiently large to prohibit in reality the approach to the enemy shore (Art. 2) ; whereas, the question of determining whether the blockade is effective is a question of fact (Art. 3) ; whereas, the blockade, in order to be binding, must be declared and made known in conformity with Articles 9, 11 and 16, and especially to the neutral Powers by means of a communication addressed to their governments or their accredited representatives ;

Whereas, the rules above enumerated correspond in substance to the principles generally recognized by international law and are in harmony with modern practice as observed by most states ;

Whereas, the English, American and Japanese doctrine require with regard to an effective blockade that a region be guarded by a sufficient force to render departure or entrance dangerous, or in other words, to render very probable the capture of vessels attempting entrance or departure, save under particular circumstances, such as storms, violent winds and necessary absence of the blockading forces ; whereas, the distance at which these vessels are stationed is indifferent, provided access be in fact prohibited ;

Whereas, according to a declaration in conformity with the stipulations of London and made known in a regular way to the neutral Powers, England decreed the blockading of the whole coast, including the port of Bruges, occupied by the enemy ;

Whereas, this blockade was rendered effective and maintained until the armistice by a body of forces and of engines of naval warfare which had the effect of prohibiting in fact approach or departure from the ports of the Belgian coast ;

1. Whereas, in the first place, the English mine-fields obstructed the whole North Sea as far as the coast S. E., and later from the entire coast of England as far as the west coast of Holland, leaving free only Dutch territorial waters, which were partially mined by the Dutch, and two narrow passages between England and Holland ; whereas, these mine-fields were constantly guarded by numerous English cruisers which continually patrolled the southern part of the North Sea and whose blockading action was thus maintained by the presence of mines ; whereas, moreover, in order to be able to navigate in the Dutch territorial waters an authorization and a Dutch pilot were necessary ; whereas, this could not be done without certain difficulties in view of the examining vessels of war, located before Westkapelle and before Cadzand, controlling minutely such demands, and whereas, on the other hand, Belgian territorial waters, strewn in part with German mines, were only accessible through the authorization and the assistance of the Germans, necessary to guide a merchantman through the

mines; whereas, also, not a single case is known to the council of a vessel coming from the high seas and passing by Flessingue to go to Zeebrugge, and likewise the council does not know of any ship that entered the latter port coming directly from the open sea;

Whereas, the impediments caused to navigation not only by the Germans but also by the Dutch were of a nature to increase the danger of capture or of destruction for vessels attempting to violate the blockade;

2. Whereas, independently of the mines, the English maintained a close guard by a fleet of war vessels which had their naval bases at Dover, Dunkirk, Calais, Ramsgate, Sheerness, Southend, Harwich, Lowestoft, et cetera, which, created especially for the supervision of these districts, plowed the English Channel and the North Sea; whereas, the English even attacked by night some German torpedo boats which, having attempted to escape from Zeebrugge had to seek refuge at Ymuiden; whereas, at their departure from Ymuiden these torpedo boats were again attacked, during the night, by the English even into the Dutch territorial waters;

3. Whereas, the whole Belgian coast was frequently subjected to terrible bombardments at a long distance by the English monitors which, constructed especially for the bombardment of the Belgian coast, were equipped with 15-inch (38 cm.) cannon;

Whereas, although a violation of the blockade could only expose a vessel to seizure, it is hardly doubtful but that under these conditions of unsafety for navigation no vessel of commerce would have ventured to attempt entrance to or exit from the port;

4. Whereas, the Allies were still patrolling the whole Belgian coast both by day and night by means of formidable aeroplanes and airships, a new arm of the navy used as such by the Germans themselves;

5. Whereas, English submarines contributed equally to the blockade of the Belgian coasts;

6. Whereas, moreover, Germany, by its barbarous and inhuman practices of unrestricted submarine warfare, rendered safe navigation on the high seas impossible in fact; whereas, the German submarines, with almost rare exceptions, sank without distinction of flag, whether belligerent or neutral, all vessels which they encountered and without the least warning and without exposing themselves; whereas, when the unrestricted submarine warfare was declared (early in 1917), a number of neutral vessels found themselves in English waters; whereas, they were destined to neutral countries washed by the North Sea and its abutments; whereas, after they had waited more than two months before being able to obtain the permission of the Germans to effect the passage of the North Sea, this permission was finally granted to them on days set in advance and with the understanding that the exterior sides of the vessels be previously painted with huge red and white vertical bands so as to be easily recognizable from the limited view of the periscope of a German submarine; whereas, every

vessel encountered and not being painted with these huge red and white bands was to be torpedoed, without quarter, and as far as possible, to use the expression of the German diplomat at Buenos Aires, "spurlos versunken"; whereas, it, therefore, goes without saying that every vessel found in the other waters from the said time on was to be torpedoed; whereas, the vessels which might have desired to make for a Belgian port or to depart therefrom were accordingly directly exposed to being torpedoed in default of being able to show any distinctive mark, and whereas, those which might have shown a distinctive mark sufficiently apparent for a periscope would not have escaped the vigilance of and capture by the Allied patrol boats;

Whereas, to sum up, the situation was such, that as soon as a vessel had left Dutch territorial waters, bound either north or south, it was confronted by an unknown fate in the waters infested by enemy vessels and engines, and not only exposed to torpedoing without the least previous warning of any kind whatsoever by a German submarine, from which not the least quarter could be expected, but also to capture by an Allied naval or aerial patrol;

Whereas, it follows from these considerations that the blockade of the whole Belgian coast and of the port of Bruges in particular, was effective at the time of the transfer of the *Roelfina* to a neutral flag and that this transfer was null by virtue of the absolute presumption resulting from the Declaration of London;

Whereas, the firm of Nederlandsche Gist en Spiritus Fabriek is not, therefore, justified in availing itself of the sale concluded between it and the German authorities on October 12, 1918, counter to the rights which the Belgian State bases upon the recapture of a vessel that has legally retained enemy character;

As to the claim of the French State made through diplomatic channels;

Whereas, the French State, through the mediation of the Executive Commission of Insurance against War Risks had, in the course of the year 1917 and independently of cargoes, insured the hull of the sailing vessel *Roelfina* for four-fifths of its agreed value, that is 50,840 francs;

Whereas, by the effect of its condemnation through a German prize tribunal, this ship has acquired enemy character, with regard to the belligerent who effected its recapture subsequently;

Whereas, for reasons developed by the judgments of this council in the cases of the steamships *Midsland* and *Gelderland*, as well as in the case of the sailing vessel *Agiena*, the latter under date of this day, the recapture made by the Belgian State under the aforesaid conditions was not a recapture "but a new prize, not obliging the recaptor to restitution with regard to the former neutral proprietor, definitively deprived of his right";

Whereas, this juridical situation could not be influenced by the circumstance that since the original capture the Dutch shipowner Spliethof P. A. A. de Jonge, proprietor of the vessel, has relinquished it with subrogation of its rights to the underwriter, the French State;

Whereas, in spite of the regret that the Belgian Prize Council may feel in being compelled to reject a claim formulated by a friendly nation which during the recent war has made the most noble effort for the triumph of the cause of civilization, and while leaving it to the Belgian Government to act upon the claim, if it is fitting, the council must needs, under pain of failing in its mission of limiting itself to judge in accordance with law, state in the present case that the French State could not have with regard to the recaptor, the Belgian State, more rights than the neutral shipowner had, whose assign it is; whereas, the recapture affected a neutral vessel at the moment of its original capture, the latter alone having to be considered in this case; and whereas, under any hypothesis, if the vessel should be considered an Allied vessel, its condemnation by the German prize court would not in any less degree hinder the obligation of restitution, as in the case of a neutral vessel;

Whereas, the conditions of the armistice, which were directed exclusively against Germany, could not have had as their object to deprive Belgium, an Allied Power, of the benefits acquired before the armistice by a capture which would bring about the dispossession of the enemy and which represents the exercise of a legitimate right confirmed on this day by a sentence of validity;

For these reasons:

The council having heard the Assistant Commissioner of the Government, De Vos, in his pertinent motions, rejecting all contrary claims as unfounded, and acknowledging to the Nederlandsche Gist en Spiritus Fabriek that it estimates the litigation at more than 20,000 francs, declares legal and valid the capture of the sailing vessel *Roelfina*, and decrees that this vessel shall belong in its totality to the Belgian State, Expenses as in law.

IN RE THE UNITED COMBED WOOL SPINNING MILLS OF SCHAFFHAUSEN
AND DERENDINGEN ¹

French Council of Prizes

Paris, March 29, 1917

In the name of the French people, the Council of Prizes.
In view of the decree of March 13, 1915;

¹ Translated from MS. in the Department of State.

In view of the memorandum of March 3, 1917, registered in the Office of the Secretary of the Prize Council on the 22nd of the same month, by the Minister of Marine Affairs, transmitting the report relative to the seizure at Havre of three boxes of woolen fabrics;

In view of the official report of February 23, 1917, according to which an officer, designated for that purpose by the Commandant of the Navy at Havre, declares that he seized in the railroad station at Havre three boxes of woolen fabrics shipped by the "United Combed Wool Spinning Mills at Schaffhausen and Derendingen," to wit—

Two boxes marked L. and C. Numbers 7879-80. Net weight—548 K., containing 1,460 meters;

One box marked L. and C. Number 7875. Net weight— $\frac{413 \text{ K.}}{961 \text{ K.}}$ containing $\frac{1157}{2617}$ meters; said cases addressed to Havre to the forwarding agency Marzolff and Co., to be loaded on the Dutch steamer *Ary Scheffer* and consigned to the firm Lichtenstein and Co., at Amsterdam:

In view of the telegram of February 6, 1917, from the Naval Attaché of the French Legation at The Hague conveying the information that the firm Lichtenstein is German:

Together with the documents of the report:

In view of the notice inserted in the *Official Journal* of March 23, 1917;

Having heard M. Rouchon Mazerat, member of the Council, *Judge-Advocate*, and M. Chardenet, Commissary of the Government, in his motions;

Considering that if, according to the terms of Article 7 of the decree of March 13, 1915, "the question of ascertaining whether the intercepted merchandise is merchandise belonging to German subjects or coming from Germany or shipped over Germany, is brought before the Prize Council," it appears from the provisions of said act that it can refer only to merchandise that has been loaded and seized on a vessel or in a warehouse detaining it:

Considering that the three aforementioned cases have on the contrary been seized, coming from Switzerland, in the railroad station of Havre before their embarkation on the Dutch steamer *Ary Scheffer*;

Decides:

The Prize Council is incompetent to render decision on the seizure in the railroad station of Havre of three boxes of woolen fabrics of Swiss provenience before they are sent on to a firm at Amsterdam which is reputed to be German.

BOOK REVIEWS*

America and the Race for World Dominion. By A. Demangeon. New York: Doubleday, Page & Co., 1921. xiv+234 pp. \$2.00.

Sensational enough in the principal thesis which it supported in the original European edition, and brilliant as was its style in the original French, this little volume has been made still more sensational in translation. Its title has been materially altered and a phrasing and diction have been adopted by the translator which are skillfully calculated to accentuate all of the startling ideas, or all phases of the one startling idea, which the author presents. This is a rather unusual thing to do, it may be supposed. To present a work originally conceived as dealing with "the decline of Europe" as a treatise on "America and the race for world dominion" may be good tactics in the publishing world; it is hardly good science.

For the author is primarily interested in, and he discusses, primarily, the former subject. Europe has, he believes, for some half a century now, but mainly as a result of the War, been losing her pre-eminence in the manufacturing world and, what is more important, her control of world commerce and world finance. Man-power has been lost by emigration and by war; credit has been squandered in the purchase of food and raw materials which could not be had in Europe, and even manufactured products began to be imported while all European production and finance were concentrated on war. No longer is Europe in a position to supply the world with capital, with colonists, with manufactured products. Her subject peoples are rising to throw off European domination. The non-European countries are preparing "to do without Europe." They dispute the idea that the world is to be unified with Europe as a centre; they hope for destruction of the European centralization and monopoly; they are bringing about "the dismembering of the European Empire."

Such a thesis, if true, means that we are witnessing, in our own day, and in the space of a half-century or a little more, a shifting of the centre of civilization in the world comparable only with that which worked itself out from the fourth century to the fourteenth in Europe itself, when the Mediterranean gave place to Northern and Central Europe as the centre of the world's life. And the thesis is convincingly presented by the Pro-

*The JOURNAL assumes no responsibility for the views expressed in signed book reviews.—ED.

fessor of Geography at the Sorbonne, with a wealth of statistical evidence which seems to leave in the mind of the American reader, at least, no room for doubt.

What, then, is to become of the predominance heretofore held by Europe? The title of the American edition implies that "world dominion" is to pass to America. One or two sentences in the book encourage this inference. "Financiers, manufacturers, and merchants (of the United States) work in unity, preparing the way for one another in all corners of the world where there is a part to play, or a market to conquer." "It is an economic offensive that has as its aim the chaining to the chariot of America of vast groups of human beings that until recently followed the fortunes of Europe."

Yet, on the whole, the author does not mean to say either that there is a deliberate "race" for dominion on the part of America and Europe, or that the "dominion" for which there exists, in the very nature of the situation, an unconscious competition, is that sharp type of legal or political dominion which we call imperialism. The "dominion" at stake is general economic power and cultural authority. Even such power, moreover, is not to pass to the United States intact. Japan receives almost as much attention from the author as does America. If the man-power, the financial power, the industry, the sea-power, and the commerce of America have increased in stupendous leaps in the last generation, and especially since 1914, so have the powers of Japan developed, until she dominates the Asiatic scene as the United States dominates the American. What is happening, in reality, is that America and Asia are each rising to assert their independence from Europe. Europe need not, and will not, go under the yoke, but will merely lose her hegemony of other years. The world is to be decentralized, to be "regionalized"; the Pacific will be "a new Mediterranean"; certain parts of the earth will centre about Japan, others about America, and, presumably, others about old Europe. "There will be no longer unity, but a plurality, of influences." (This is very far from American dominion.)

This volume thus registers a turning point in world history as important as the Renaissance and the downfall of Rome together. It is the story in miniature of the decline and fall of the Empire of Europe, of the birth of Asia and America as distinct centres of the world's life.

PITMAN B. POTTER.

Le Droit des Gens et les Rapports des Grandes Puissances avec les autres États avant le Pacte de la Société des Nations. By Charles Dupuis. Paris: Plon-Nourrit, 1921, pp. 544.

The author tells us in his Preface to this interesting volume, that he wrote most of it at the request of the Nobel Committee of Peace (of the

Norwegian Parliament); but the state of war prevented its publication in due time and the author was forced, adding a few chapters, to publish it himself two years later. His main object, in writing this book, was to describe the history of the growth and strength of the great powers and of the parallel development of international law and organizations, curbing and limiting that strength and gradually creating a whole system of guarantees for the smaller and weaker nations; he gives us an excellent picture of the curtailments and restrictions imposed upon the State Sovereignty, which formerly was the expression of state selfishness only. The crowning success of this movement the author sees in the establishment of the League of Nations.

The first chapter deals with the difficult question of the equality of states, their natural inequalities, the political strife between might and right, and the real meaning of sovereignty and independence, as they developed among the European states. Chapters II and IV are devoted to the history of the great powers; the author eloquently tells the story of the amazing growth of a few states, who played a leading part mostly on account of their tremendous strength; perhaps even too many details are given in these chapters, as much of the ground has been so thoroughly covered by other historians. Chapter III deals with the ideas of sovereignty and independence in their international aspects and was probably meant to be the center of his investigation; a trifle more precision would not have harmed. In Chapter V we find the discussion of the old question of federations and confederations, with reference mostly to Germany and to the fate of the smaller nations. Then follows (Ch. VI-VII) the history of permanent neutrality and of the protectorates; this last chapter has much valuable information, as well as the following one (VIII) on international finance and the Drago Doctrine.

The treatment of the difficult questions concerning international finance leaves much to be desired; the time has not yet come for a detailed investigation and it will take probably many volumes devoted entirely to the subject. Chapter IX deals with the Monroe Doctrine and might be of some interest, as it reflects an impartial European view of the matter. The author's views of the subject are further developed in Chapter XI, dealing with "Pan-Americanism and the Bryan Treaties;" these two chapters contain interesting information for European readers. Chapter X, devoted to the Hague Peace Conferences, on the contrary, re-states well known facts and conclusions. Finally in Chapter XII are enumerated the projects of international organizations that might have a direct bearing on contemporary events and policies. The last Chapter (XIII), dealing with the existing and possible guarantees of the rights and interests of the smaller and weaker nations, seems rather vague and perhaps even a little incoherent; it makes the impression that the writer was in a great hurry and did not quite digest his own conclusions. He discusses at length the

"International Spirit" of the great powers, not always drawing the necessary line between theories and questions of fact, personal postulates and historical events; the reader does not get any definite idea of the author's own point of view; neither do we find here any clear formulæ of international law; maybe, however, in this latter case, it is not quite the fault of the author; contemporary history is not conducive to such indisputable definitions and no one can yet predict the future fate of the League of Nations. The author, at least, seems to believe in its future and final success.

S. A. KORFF.

Letters to "The Times" upon War and Neutrality, 1881-1920, with some commentary. By Sir Thomas Erskine Holland, K.C., D.C.L., F.B.A. Third edition. London: Longmans, Green and Company, 1921. pp. xv+215. \$4.00.

Sir Erskine, as I believe he prefers to be known, there being another Sir Thomas Holland, may perhaps be considered the dean of British students of international law. He was born in 1835 and is now therefore eighty-six years of age. From 1874 to 1910, a period of thirty-six years, he served with great distinction as professor of International Law at Oxford. He has, in full vigor of mind, survived his eminent and gifted contemporaries, Westlake and Oppenheim, of Cambridge. He has well earned and won the blue ribbon of international law, the presidency of the *Institut de Droit International* and received honors from his own and many sovereigns and from universities and learned societies the world over, including honorary membership in the American Society of International Law. Today he stands *facile princeps* among English scholars in this great and useful branch of learning. His publications are many and their authority beyond question.

Therefore this little book of 215 pages from his hand deserves our especial attention.

The first edition appeared in 1909, and in the preface he said:

For a good many years past I have been allowed to comment, in letters to "The Times," upon points of International Law as they have been raised by the events of the day. These letters have been fortunate enough to attract some attention both at home and abroad, and requests have frequently reached me that they should be rendered more easily accessible.

He accordingly selected from a greater number those on "questions of War and Neutrality," and published them. He published a second edition with many new letters in 1914, saying in the preface:

I have no reason to complain of the reception which has so far been accorded to the views I have thought it my duty to put forward.

In the preface to the present and third edition, dated April 25, 1921, he says:

This, doubtless, final edition of my letters upon War and Neutrality contains. . . the whole series of such letters covering a period of no less than forty years."

The explanatory commentaries have been carefully brought up to date, all have been fully indexed and the little volume is presented in the belief that "not a few of these questions are sure again to come to the front so soon as the rehabilitation of International Law, rendered necessary by the conduct of the late war, shall be seriously taken in hand."

The letters number 113 in all. They are brief, ranging from half a page to four or five pages. They are clear and not hesitant in tone. It must be added that they quite uniformly display ripe scholarship and sound judgment. Thoughtless, raw and dangerous change is strongly combated, but the process of evolution and adjustment to new conditions is fully recognized and supported. The American doctrines excite, on Sir Erskine's part, no hostility, but on the other hand often meet with what Emerson calls a "manly furtherance." For instance, in 1900 he declared that the innovations made during the American Civil War on the doctrine of continuous voyage seemed "to be demanded by the conditions of modern commerce and might well be followed by a British prize court," and he had the satisfaction to see these words referred to by Lord Salisbury eight days later. He shows, moreover, that our doctrine, so much decried by European writers, was adopted by an Italian court in 1896 and by the British Government in 1900 (see p. 161) and endorsed, after long discussion, by the *Institut de Droit International* in 1896.

"The deceased Declaration of London," as he calls it (p. 92), which gave such satisfaction to those who shaped it and which met with such general disaster thereafter, Sir Erskine consistently regarded with great distrust and almost animosity. He repeatedly records its failure to obtain ratification and the utter breakdown, as a rule for action, of even those portions of its enactment temporarily approved during the late war. He deemed it "nothing more than an objectionable draft by which no country has consented to be bound." He quotes Lord Portsmouth's description of it as "rubbish" with hearty agreement, and shows that an order in council of 1916 revoked all orders by which provisions of the declaration were adopted or modified for the duration of the war. He shows further that the French Government joined the British Government in declaring that they had been disappointed in the expectation of finding in the declaration "a suitable digest of principles and compendium of working rules" (p. 207).

Sir Erskine recognizes the League of Nations as "a brave design," but finds it a serious mistake to "combine in one and the same document provisions needed for putting an end to an existing state of war with other

provisions aiming at the creation, in the future, of a new supernational society" (p. 7).

Sir Erskine does not shrink from controversy, but he conducts it with dignity, courtesy, and, it must be added, remarkable success, as many eminent contestants discovered who crossed swords with him in these intellectual encounters, *par exemple*, Mr. Gibson Bowles and Mr. Baty.

I am tempted to quote a gallant passage, one of many, in support of the claims of international law. Here it is:

The ignorance, by the by, which certain of my critics have displayed, of the nature and claims of international law is not a little surprising. Some seem to identify it with treaties; others with "Vattel;" several having become aware that it is not law of the kind which is enforced by a policeman or a county court bailiff, have hastened, much exhilarated, to give the world the benefit of their discovery. Most of them are under the impression that it has been concocted by "book worms," "jurists," "professors" or other "theorists," instead of, as is the fact, by statesmen, diplomatists, prize courts, generals and admirals.

This admirable work in its new edition will assuredly continue, as in the past, to be referred to as a valued and high authority. Too much cannot be said of the happy combination of comprehensive, but not pedantic learning, extending to the most recent decisions and acts even of remote and foreign powers, with sound, sober, cautious judgment. Nor can the courage and tenacity be overlooked with which just and needed corrections of popular action or feeling have been attempted and often achieved, when such attempt involved much criticism and hostile feeling, from persons perhaps as patriotic but less wise and thoughtful than Sir Erskine. He fully appreciates, as do most of those who devote years to its study and development, the many imperfections in the law of nations, the many difficulties in its exact ascertainment and enforcement. But such long and deep study and acquaintance has no less assured him of its noble purpose, its vast scope and its profound effect as an aid to justice and to humanity. Long may he continue its wise exponent, its brave and effective defender!

CHARLES NOBLE GREGORY.

Treaties and Agreements with and concerning China, 1894-1919. By John V. A. MacMurray, Compiler and Editor. New York: Oxford University Press, 1921. 2 vols., pp. 1729. Publication of the Carnegie Endowment for International Peace, Division of International Law. \$10.00.

These two massive volumes constitute one of the most valuable of the publications of the Carnegie Endowment. They represent an immense amount of labor upon the part of their compiler and editor. The reviewer has only admiration and gratitude for the painstaking and intelligent care

with which this labor has been performed. No one not familiar with conditions in China can form an adequate idea of the necessity for such a work as this. In this connection the reviewer ventures to quote words which he used in the introduction to a volume published by him in 1920 dealing with foreign rights and interests in China. He then said of China:

Probably nowhere else in the world is there such a mixture of territorial rights with foreign privileges and understandings, of purely political engagements with economic and financial concessions, of foreign interests conflicting with one another and with those of the nominally sovereign State. When a national government is wholly untrammelled with regard to the management of its own domestic affairs and has within its own hands the enforcement of law within its own territorial borders, international rights and responsibilities are easily determined by a resort to well-established principles of public law. But when, as in the case of China, we have a Power which permits the exercise within its limits of all kinds of extraterritorial rights and privileges; when there exists within its territory spheres of interest, special interests, war zones, leased territories, treaty ports, concessions, settlements and legation quarters, when there are in force a multitude of special engagements to foreign Powers with reference to commercial and industrial rights, railways and mines, loans and currency; when two of its chief revenue services—the maritime customs and the salt tax—are under foreign overhead administrative control or direction; when the proceeds of these and other revenues are definitely pledged to meet fixed charges on foreign indebtedness; when, at various points within its borders, there are stationed considerable bodies of foreign troops under foreign command—when we have these and other phenomena all carrying with them limitations upon the free exercise by the central government of its ordinary administrative powers or its discretionary right to deal as it deems best with the individual nations with which it maintains treaty relations, we then have a condition of affairs which furnishes abundant material not only for theoretical or academic discussions by students of international jurisprudence, but for serious conflict and disputes between the nations concerned.

Mr. MacMurray, in his volume, has followed much the same principles of selection as those used by W. W. Rockhill in his collections published by the United States Government in 1904 and 1908, except that the arrangement is a strictly chronological one. In addition to treaties and other formal international agreements, less formal declarations and arrangements, loan and railway and mining and other agreements have been included, and valuable footnotes, by way of cross-references, indicate the relations between the several documents. In all cases the English text is given.

Beside seven valuable maps, and an elaborate index, there is a chronological list of the documents at the front of the first volume; there is a similar list arranged according to nationalities.

Mr. MacMurray's volumes supersede Rockhill's two volumes, but, for the period prior to 1894, one must still consult Hertalet's *Treaties between Great Britain and China and Foreign Powers* (3d ed., 2 volumes, 1908) and *Treaties, Conventions, etc., between China and Foreign States* (2d ed.,

2 volumes, 1917), published by the Inspector General of the Chinese Maritime Customs.

Of Mr. MacMurray personally, it may be said that he has had a considerable number of years' service in the American diplomatic service, much of which has been in the Far East—in Siam, China, and Japan. In Peking he was First Secretary of the American Legation, and in Tokio, Counselor of Embassy. During the last few years he has been Chief of the Division of Far Eastern Affairs in the Department of State, and was the official upon whom Secretary Hughes chiefly relied in preparing for and conducting the recent Conference on Far Eastern Affairs at Washington. It is to be hoped that from time to time Mr. MacMurray will be led to compile, and the Endowment to issue, supplementary volumes that will include treaties and agreements with or relating to China since 1919.

W. W. WILLOUGHBY.

Handausgabe der Reichsverfassung vom 11 August, 1919. By Dr. Fritz Poetzsch. 2d ed. Berlin: Otto Liebmann, 1921. pp. 226. 17 marks.

This is a type of legal publication common in Germany before the war. It is chiefly a brief commentary, section by section, upon the new constitution of the German Commonwealth. Preliminary chapters discuss the history of the constitution and the characteristics of the new organization created thereby. The author takes the view that in its new form the German Commonwealth is more nearly a unitary state than a federal state. American readers will be particularly interested in the author's comments upon the enlarged powers of the central government, and upon the popular basis of the new government. The experience of the German Government with proportional representation and the referendum will be watched with interest.

In connection with this volume, attention may be called to the excellent translation of the German constitution, made by Professors William B. Munro and Arthur N. Holcombe, and published in the *League of Nations*, Vol. II, No. 6 (Boston, December, 1919). An article on the new German constitution, by Prof. Ernst Freund, appeared in the *Political Science Quarterly* for June, 1920 (Vol. 35, page 117). Prof. Freund gives an excellent analysis of the new institutions and the new principles established for the German Government under its republican form of organization. The republican constitution of Germany contains a number of declarations of broad principles of social justice, and seeks to lay the foundation for a broadly democratic political system. However, the constitution must be regarded for a time at least as chiefly a promise of a new type of government and of new principles. The future must see the fulfillment of this promise, for no constitutional text in and of itself vitally changes political institutions.

W. F. DODD.

The Question of Aborigines in the Law and Practice of Nations. By Alpheus Henry Snow. New York: G. P. Putnam's Sons. 1921. pp. 376.

The death of Mr. Snow on August 19, 1920, was a distinct loss to scholarship in the field of international law. During many years he had contributed to scientific publications articles dealing with matters of public law, a number of which have now been collected in a volume entitled "The American Philosophy of Government." In 1902 he published a volume on "The Administration of Dependencies" which bore the subtitle of "a study of the evolution of federal empire, with special reference to American colonial problems." The volume is a constructive examination of the powers of Congress and of the President in the government of American territorial possessions, and is a valuable contribution to the theory and practice of American constitutional law.

The present volume, reprinted posthumously, is the last study from the author's pen. It was originally written in the form of a monograph at the request of the Department of State in the spring of 1918, and was intended, like other studies undertaken at the time, for the guidance of the American delegates at the conference which would settle the issues of the war. The author had practically a clear field before him. As he expresses the situation in his prefatory note, there was "no treatise on the question, nor even any chapters in any book on international law or the law of colonies, to serve as a model or a guide."

The chapters of the volume discuss in succession the relation of wardship between aborigines and the state which exercises sovereignty over them, the rights recognized as belonging to aborigines, the duties of their guardian states, the legal effect of agreements between civilized states and aborigines, and the provisions of the Berlin-African Conference, as well as international action since the Berlin Conference, in particular the provisions of the Algeiras Conference with regard to Morocco.

From the outset a distinction must be made between the provisions of international law with regard to aborigines and the provisions of the municipal law of the several states. On this point the title of the monograph is somewhat misleading, as is also the arrangement of the material of the volume. The provisions of international law proper on the subject are exceedingly restricted, consisting in certain general principles stated in treaties and conventions, such as the act following the Berlin Conference of 1885, to the effect that the signatory powers recognized the obligation to watch over the preservation of the native tribes and to care for the conditions of their moral and material well-being. More definite duties of protection are to be seen in the guarantees of freedom of conscience and religious toleration to be enjoyed by the natives, and of freedom of activity on the part of religious and charitable institutions without distinction or

creed or nationality. The author is not sufficiently careful to distinguish such provisions adopted for the benefit of the natives from other provisions, such as those forbidding commercial monopolies in Central Africa and providing for freedom of trade and transit, which were adopted for the benefit of citizens of the signatory powers. The special provisions adopted for the suppression of the slave trade form a class by themselves. The doctrine of "intervention for humanity" is discussed by the author in a separate chapter, but it would seem to have no direct bearing upon the subject, since the protection of aborigines does not appear in any of the cases cited to have been the motive which induced the guardian state to assume sovereignty over the territory. The instance of Cuba scarcely seems in point, while the admirable provisions of the Philippine Government Acts of 1902 and 1916 had no part in the causes of the intervention.

In addition to the limited provisions of international law there is the large body of legislative provisions adopted by the voluntary action of the several states in possession of territories occupied by aborigines. These provisions of national public law as distinct from international law are discussed in detail by the author, beginning with the treaties entered into by the United States with the Indian tribes which have been treated as "domestic dependent nations" and as "wards of the nation." The provisions of the Philippine Government Act of 1902 established a form of government designed not for the satisfaction of the United States but "for the happiness, peace and prosperity of the people of the Philippine Islands." The volume goes on to review British, French, German, and other foreign legislation with respect to the administration of colonies and their aboriginal inhabitants.

Mr. Snow's volume collects together much valuable material not otherwise readily accessible. Apart from possible defects of arrangement it is a thorough and careful study of a subject which must form an important problem of international law for some time to come. One can only speculate how far the American delegates were influenced by its pages in laying down the provisions of Article XXII of the Covenant of the League of Nations. Whether or not the mandates under the League shall prove to have been administered in the spirit of these provisions, it would seem that the author is fairly justified in asserting that the conscientiousness and zeal with which the United States has fulfilled its duty of tutorship in the case of the Philippine Islands entitle it "to take the lead in any future development of the law of nations in this respect."

C. G. FENWICK.

A History of Sea Power. By William Oliver Stevens and Allan Westcott. New York: George H. Doran and Company, 1920, pp. xi+458.

This is a comparatively brief and concise work upon the influence of sea power from the earliest days until the present time. It serves a need as a text book upon the subject for the Naval Academy as well as presenting to the general reader and to the student of naval history a most excellent and consecutive work upon the subject.

Although a reference and discussion of the Maritime Codes of the Mediterranean and North Seas would be of interest to a reader upon the subject, it is not strictly germane to the purpose of the book except as regulators of the sea strength which is an element in the development of the sea power of the nations of the world. In fact the authors touch but lightly upon the regulation of the sea power by maritime or international law in peace time and war.

As to the partition of the high seas made by the Pope of Rome directly after the return of Columbus, it does make mention as an event allied both to naval history and to the freedom of the seas by an assumption of territorial jurisdiction which even there was recognized as unjustifiable. In reference to this the authors say:

A Papal bull of May 4, 1493 conferred upon Spain title to all lands discovered or yet to be discovered in the Western Ocean. Another on the day following divided the claims of Spain and Portugal by a line running North and South "100 leagues west of the Azores and the Cape Verde Islands" (an obscure statement in view of the fact that the Cape Verdes lie considerably to the westward of the other group) and granted to Spain a monopoly of commerce in the waters west and south (again an obscure phrase) of this line, so that no other nation could trade without license from the power in control. This was the extraordinary Papal decree dividing the waters of the world. Small wonder that the French King, Francis I, remarked that he refused to recognize the title of the claimants till they could produce the will of Father Adam, making them universal heirs; or that Elizabeth, when a century later England became interested in world trade, disputed a division contrary not only to common sense and treaties but to "the law of nations."

An interesting reference is made to the Sea Beggars of Holland and the North acting under letters of marque first issued by Louis of Nassau, brother of William of Orange. It was no uncommon practice for them to go over the rail of a merchant ship with pick and axe and kill every Spaniard on board. In 1569, William of Orange, however, appointed Seigneur de Lambres as admiral of this fleet and issued strict instructions to him to secure better order, avoid attacks on vessels of friendly and neutral states, enforce the articles of war, and carry a preacher on each ship.

During the Napoleonic War in December, 1800, the convention forming the Armed Neutrality of 1800 came into being, composed of Russia, Prussia, Sweden and Denmark, who pledged themselves to resist infringe-

ments of neutral rights, whether by extension of contraband lists, seizure of enemy goods under neutral flags, search of vessels declared innocent by their naval convoy, and by other methods not unfamiliar in our own times.

In 1807, as a consequence of the Treaty of Tilsit, France was at liberty to take possession of the Danish fleet, then of considerable size, and use it against England. As a result and as a matter of self preservation, the attack upon the fleet and batteries of Copenhagen followed, the description of this engagement by the English fleet under Hyde Parker, of which fleet Nelson was the soul, being given fully. As to the international law of the matter, Dr. Stowell in his recent work upon Intervention, tersely and wisely says in his belief "that any intelligent government would disregard the neutrality of a power too weak to prevent itself from becoming an involuntary instrument for the carrying out of the enemy's designs."

There are interesting references to the large re-export trade of the United States from the West Indies, only exceeded in 1915, to the revival of the doctrine of continuous voyages in the civil war and world war and a chapter on the commerce warfare of the world war, which brings the book up to date both in time and maritime warfare. The book is well and accurately written and of great interest to students in naval warfare and naval history.

CHARLES H. STOCKTON.¹

PERIODICAL LITERATURE ON INTERNATIONAL LAW SUBJECTS.*

Abbreviations: American Bar Association Journal (*Amer. Bar. Ass. J.*); American Law Review (*Amer. L. E.*); American Political Science Review (*Amer. Pol. Sc. E.*); Archiv des öffentlichen Rechts (*Arch. d. öffentl. Rechts*); Canadian Law Times (*Can. L. T.*); Harvard Law Review (*Harvard L. E.*); Hispanic American Historical Review (*Hispanic Amer. Hist. E.*); North American Review (*N. Amer. E.*); Revue de Droit International et de Legislation Comparée (*E. Dr. Inter. et Legis. Comp.*); Revue Générale de Droit International Public (*E. Gen. de Dr. Inter. Public*); University of Pennsylvania Law Review (*Pa. U. L. E.*); Yale Law Journal (*Yale L. J.*).

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HOPE K. THOMPSON.

CONFERENCE ON THE LIMITATION OF ARMAMENT

REPORT OF THE AMERICAN DELEGATION¹

February 9, 1922

TO THE PRESIDENT:

The undersigned, appointed by the President as Commissioners to represent the Government of the United States at the Conference on Limitation of Armament, have the honor to submit the following report of the Proceedings of the Conference.

On July 8, 1921, by direction of the President, the Department of State addressed an informal inquiry to the group of Powers known as the Principal Allied and Associated Powers—that is, Great Britain, France, Italy, and Japan—to ascertain whether it would be agreeable to them to take part in a conference on the subject of limitation of armament, to be held in Washington at a time to be mutually agreed upon. In making this inquiry, it was stated to be manifest that the question of limitation of armament had a close relation to Pacific and Far Eastern problems, and the President suggested that the Powers especially interested in these problems should undertake in connection with the Conference the consideration of all matters bearing upon their solution with a view to reaching a common understanding with respect to principles and policies in the Far East. The suggestion having been favorably received, formal invitations were issued to the Powers above mentioned to participate in a Conference on Limitation of Armament to be held in Washington on the eleventh day of November, 1921, and an invitation was also extended to Belgium, China, The Netherlands, and Portugal to participate in the discussion of Pacific and Far Eastern questions in connection with the Conference.

These invitations were formally accepted and the first session of the Conference was held at Continental Hall in the City of Washington on the twelfth day of November, 1921, the time of the first session being postponed in order to permit the Delegates to attend the ceremonies upon the burial of the Unknown Soldier at Arlington Cemetery on November eleventh.

The following Delegates attended the Conference:

FOR THE UNITED STATES OF AMERICA:

Charles Evans Hughes.
Henry Cabot Lodge.
Oscar W. Underwood.
Elihu Root.

¹Senate Document, No. 125, 67th Cong., 2d Sess.

FOR BELGIUM:

Baron de Cartier, Belgian Ambassador to the United States.

FOR THE BRITISH EMPIRE:

The Right Honorable A. J. Balfour, O. M., M. P., Lord President of the Council.

The Right Honorable Lord Lee of Fareham, G. B. E., K. C. B., First Lord of the Admiralty.

The Right Honorable Sir Auckland Geddes, K. C. B., British Ambassador.

Canada—

The Right Honorable Sir Robert Borden, G. C. M. G., K. C.

Australia—

Senator the Right Honorable G. F. Pearce, Australian Minister for Defense.

New Zealand—

The Honorable Sir John Salmond, Judge of the Supreme Court of New Zealand.

India—

The Right Honorable Srinivasa Sastri, member of the Indian Council of State.

FOR CHINA:

Mr. Sao-Ke Alfred Sze, Envoy Extraordinary and Minister Plenipotentiary to United States of America.

Mr. V. K. Wellington Koo, Envoy Extraordinary and Minister Plenipotentiary to the Court of St. James.

Mr. Chung-Hui Wang, Chief Justice of the Supreme Court of the Republic of China.

FOR FRANCE:

M. Aristide Briand, President of the Council, Minister for Foreign Affairs.

M. René Viviani, Deputy, Former President of the Council.

M. Albert Sarraut, Senator, Minister of Colonies.

M. Jules Jusserand, Ambassador of France to the United States.

FOR ITALY:

Signor Carlo Schanzer, Senator.

Signor Vittorio Rolandi-Ricci, Senator, Italian Ambassador to the United States.

Signor Luigi Albertini, Senator.

FOR JAPAN:

Baron Tomasaburo Kato, Minister of Navy.

Baron Kijuro Shidehara, Ambassador at Washington.

Prince Iyesato Tokugawa, President of House of Peers.

Mr. Masanao Hanihara, Vice Minister for Foreign Affairs.

FOR THE NETHERLANDS:

Jonkheer H. A. van Karnebeek, Minister for Foreign Affairs.
 Jonkheer F. Beelaerts van Blokland, Envoy Extraordinary and Minister Plenipotentiary, Chief of the Political Division of the Ministry for Foreign Affairs.
 Dr. E. Moresco, Vice President of the Council of the Netherlands East Indies.
 Dr. J. C. A. Everwijn, Netherlands Minister to the United States.
 Jonkheer W. H. de Beaufort, Minister Plenipotentiary.

FOR PORTUGAL:

Viscount d'Alte, Portuguese Minister to the United States.
 Captain E. de Vasconcellos.

AMERICAN ADVISORY COMMITTEE

The President appointed an Advisory Committee of Twenty-One, with the following members: Honorable George Sutherland, Chairman; Mr. Charles S. Barrett; Mrs. Charles Sumner Bird; Mrs. Katherine Phillips Edson; Mrs. Eleanor Franklin Egan; Honorable Henry P. Fletcher, Under Secretary of State; Mr. Samuel Gompers; Honorable Herbert C. Hoover, Secretary of Commerce; Mr. John L. Lewis; Honorable John M. Parker, Governor of Louisiana; General John J. Pershing, U. S. A.; Honorable Stephen G. Porter, Member of Congress; Rear Admiral W. L. Rodgers, U. S. N.; Honorable Theodore Roosevelt, Assistant Secretary of the Navy; Honorable Willard Saulsbury; Mr. Harold M. Sewall; Mr. Walter George Smith; Mr. Carmi A. Thompson; Mr. William Boyce Thompson; Honorable J. Mayhew Wainwright, Assistant Secretary of War; Mrs. Thomas G. Winter.

The Advisory Committee made careful studies of all the problems before the Conference, and their reports and advice were of the greatest value.

The Secretariat of the American Delegation was composed as follows: Mr. Basil Miles, Secretary of the Delegation; Mr. Irwin Laughlin, Counselor of Embassy, Secretary; Mr. J. Butler Wright, Counselor of Embassy, Secretary; Mr. Edward Bell, Counselor of Embassy, Secretary; Mr. Philip H. Patchin, Department of State, Secretary; Mr. Henry Suydam, Department of State, Secretary; Mr. F. L. Mayer, First Secretary of Embassy, Secretary; Mr. Tracy Lay, Consul, Secretary; Mr. W. L. Hurley, Department of State, Secretary; Mr. Stanley Washburn, Secretary; Mr. Laurence H. Green, Assistant Secretary; Mr. W. H. Beck, Assistant Secretary; Mr. T. L. Daniels, Third Secretary of Embassy, Assistant Secretary; Mr. Jefferson Patterson, Third Secretary of Embassy, Assistant Secretary; Mr. Stanley Hawks, Assistant Secretary; Mr. J. O. Denby, Third Secretary of Embassy, Assistant Secretary; Mr. John M. Vorys, Assistant Secretary.

Ceremonial, Protocol, Etc.—Honorable Robert Woods Bliss, Third Assistant Secretary of State; Mr. Warren D. Robbins, Counselor of Embassy;

Mr. Charles Lee Cooke, Department of State; Mr. Richard Southgate, Second Secretary of Embassy; Mr. Hugh Millard, Third Secretary of Embassy.

Technical staff.—Limitation of Armament. For the Department of State: Honorable Henry P. Fletcher, Under Secretary of State; Mr. J. Reuben Clark, Special Counsel to the Department of State. For the War Department: Major General George O. Squier, Radio and Electrical Communications generally; Major General C. C. Williams, Chief of Ordnance; Major General M. M. Patrick, Chief of Air Service; Brigadier General William Mitchell, Aviation; Brigadier General Amos A. Fries, Chemical Warfare; Colonel John A. McA. Palmer, Organization and General Military Subjects; Colonel B. H. Wells, Organization and General Military Subjects; Lieutenant Colonel Stuart Heintzelman, Military Intelligence and Organization of Foreign Armies; Dr. Louis Cohen, Civilian Radio Engineer, Signal Corps. For the Navy Department: Honorable Theodore Roosevelt, Assistant Secretary of the Navy; Admiral Robert E. Coontz, Technical Expert-General; Rear Admiral William A. Moffett, Aeronautics; Rear Admiral William V. Pratt, Technical Expert-General; Captain Frank H. Schofield, Technical Expert-General; Captain Luke McNamee, Technical Expert-General; Captain Samuel W. Bryant, Communications; Commander C. Hooper, Radio; Mr. L. W. Austin, Radio, Chemical Warfare; Professor Edgar F. Smith, University of Pennsylvania.

Pacific and Far Eastern questions.—Mr. John Van A. MacMurray, Chief, Division of Far Eastern Affairs, Department of State; Mr. D. C. Poole, Chief, Division of Russian Affairs; Professor E. T. Williams, formerly Chief of Far Eastern Division, Department of State; Mr. Edward Bell, Counselor of Embassy; Mr. F. P. Lockhart, Department of State; Mr. J. S. Abbott, Department of Commerce; Mr. N. T. Johnson, Department of State; Mr. E. L. Neville, Department of State; Professor G. H. Blakeslee, Clark University; Mr. Stanley K. Hornbeck, Department of State; Mr. J. P. Jameson, Department of State; Mr. Robert F. Leonard, Department of State; Mr. F. L. Mayer, Department of State; Mr. J. O. Denby, Department of State; Mr. J. L. Donaldson, Department of State.

Legal questions.—Mr. F. K. Nielsen, Solicitor of the Department of State; Mr. Chandler P. Anderson, formerly Counselor, Department of State; Professor George G. Wilson; Dr. James Brown Scott.

Economic questions and merchant marine.—Dr. W. S. Culbertson, Commissioner, United States Tariff Commission; Daniel H. Cox, United States Shipping Board.

Communications.—Mr. Leland Harrison, Counselor of Embassy; Mr. S. W. Stratton, Department of Commerce; Mr. J. H. Dellinger, Department of Commerce; Mr. Walter S. Rogers, Department of State; and Army and Navy officers.

The proceedings of the Conference were opened with prayer by Reverend William S. Abernethy, D. D., of the Calvary Baptist Church of Washington.

The President then delivered an address, expressing in these memorable words the spirit and purpose of the Government of the United States:

"Gentlemen of the Conference, the United States welcomes you with unselfish hands. We harbor no fears; we have no sordid ends to serve; we suspect no enemy; we contemplate or apprehend no conquest. Content with what we have, we seek nothing which is another's. We only wish to do with you that finer, nobler thing which no nation can do alone.

"We wish to sit with you at the table of international understanding and good will. In good conscience we are eager to meet you frankly, and invite and offer cooperation. The world demands a sober contemplation of the existing order and the realization that there can be no cure without sacrifice, not by one of us, but by all of us.

"I do not mean surrendered rights, or narrowed freedom, or denied aspirations, or ignored national necessities. Our Republic would no more ask for these than it would give. No pride need be humbled, no nationality submerged, but I would have a mergence of minds committing all of us to less preparation for war and more enjoyment of fortunate peace.

"The higher hopes come of the spirit of our coming together. It is but just to recognize varying needs and peculiar positions. Nothing can be accomplished in disregard of national apprehensions. Rather, we should act together to remove the causes of apprehensions. This is not to be done in intrigue. Greater assurance is found in the exchanges of simple honesty and directness, among men resolved to accomplish as becomes leaders among nations, when civilization itself has come to its crucial test.

"It is not to be challenged that government fails when the excess of its cost robs the people of the way to happiness and the opportunity to achieve. If the finer sentiments were not urging, the cold, hard facts of excessive cost and the eloquence of economics would urge us to reduce our armaments. If the concept of a better order does not appeal, then let us ponder the burden and the blight of continued competition.

"It is not to be denied that the world has swung along throughout the ages without heeding this call from the kindlier hearts of men. But the same world never before was so tragically brought to realization of the utter futility of passion's sway when reason and conscience and fellowship point a nobler way.

"I can speak officially only for our United States. Our hundred millions frankly want less of armament and none of war. Wholly free from guile, sure in our own minds that we harbor no unworthy designs, we accredit the world with the same good intent. So I welcome you, not alone in good will and high purpose, but with high faith.

"We are met for a service to mankind. In all simplicity, in all honesty and all honor, there may be written here the avowals of a world conscience refined by the consuming fires of war, and made more sensitive by the anxious aftermath. I hope for that understanding which will emphasize the guaranties of peace, and for commitments to less burdens and a better order which will tranquilize the world. In such an accomplishment there will be added glory to your flags and ours, and the rejoicing of mankind will make the transcending music of all succeeding time."

ORGANIZATION AND PROCEDURE

Following the address of the President, the Conference, on motion of Mr. Balfour, elected the Secretary of State of the United States as Chairman of the Conference and of each committee of which he should be a member.

The Honorable John W. Garrett, of Baltimore, Maryland, was elected Secretary-General.

A committee on Program and Procedure was appointed, consisting of heads of the Delegations or such representative as each Power might select for the purpose.

As the Conference was to concern itself with two groups of questions which, though related, required separate investigation and discussion, that is, (1) the question of limitation of armament, and (2) Pacific and Far Eastern questions, it became necessary to provide a course of procedure which would facilitate the work of the Conference in both fields. In the public discussions which preceded the Conference there were apparently two competing views: (1) that the consideration of armament should await the result of the discussion of the Far Eastern questions, and another, that the latter discussion should be postponed until an agreement for limitation of armament had been reached. It was not thought necessary to adopt either of these extreme views. It was proposed that the Conference should proceed at once to consider the question of the limitation of armament, but this was not deemed to require the postponement of the examination of Far Eastern questions. In order to serve both purposes, two committees were set up (1) consisting of the plenipotentiary delegates of the Five Powers, the United States of America, the British Empire, France, Italy, and Japan, to deal with questions of armament, and (2) consisting of the delegates of the Nine Powers, that is, the United States of America, Belgium, British Empire, China, France, Italy, Japan, The Netherlands, and Portugal, to deal with Pacific and Far Eastern questions.

The work of the two committees proceeded along parallel lines without interference with each other and the conclusions reached in each were reported, from time to time, to the Conference in plenary session for its adoption. Each committee provided itself with the necessary sub-committees dealing with technical questions and with drafting, so that in the most expeditious manner all questions before the Conference were thoroughly considered.

The Conference held seven plenary or public sessions, at the last of which, on February 6, 1922, the treaties approved by the Conference were signed.

While the sessions of the committees were not public, a complete record was kept of all their proceedings, and at the close of each session of the Committees on Armament and on Pacific and Far Eastern Questions, respectively, a communiqué was made to the press, which, generally, stated

all that had taken place in the committee and, in all cases, set forth whatever matters of importance had received attention.

Thus, full publicity was given to the proceedings of the Conference. The minutes of the plenary sessions and of the committees of the Conference are submitted herewith.

THE AGENDA

In advance of the meeting of the Conference the Department of State prepared a tentative statement of agenda which was submitted to the invited Powers. It was as follows:

Limitation of Armament

- One. Limitation of Naval Armament, under which shall be discussed
 - (a) Basis of limitation.
 - (b) Extent.
 - (c) Fulfillment.
- Two. Rules for control of new agencies of warfare.
- Three. Limitation of Land Armament.

Pacific and Far Eastern Questions

- One. Questions relating to China.
 - First: Principles to be applied.
 - Second: Application.
 - Subjects: (a) Territorial integrity.
 - (b) Administrative integrity.
 - (c) Open door—Equality of commercial and industrial opportunity.
 - (d) Concessions, monopolies, or preferential economic privileges.
 - (e) Development of railways, including plans relating to Chinese Eastern Railway.
 - (f) Preferential railroad rates.
 - (g) Status of existing commitments.
- Two. Siberia.
 - (similar headings).
- Three. Mandated Islands.
 - (unless questions earlier settled).
 - Electrical Communications in the Pacific.

While this statement was not formally adopted by the Conference, the proceedings of the Conference followed closely the lines thus indicated.

TREATIES AND RESOLUTIONS

The following treaties were approved by the Conference and signed at the closing session on February 6, 1922:

- (1) A treaty between the United States of America, the British Empire, France, Italy, and Japan, limiting naval armament:
- (2) A treaty between the same Powers, in relation to the use of submarines and noxious gases in warfare.

- (3) A treaty between all Nine Powers relating to principles and policies to be followed in matters concerning China.
- (4) A treaty between the Nine Powers relating to Chinese customs tariff.

The following treaties were notified to the Conference:

- (1) A treaty between the United States of America, the British Empire, France, and Japan, signed December 13, 1921, relating to their insular possessions and insular dominions in the Pacific Ocean.
- (2) A treaty between the same Powers, supplementary to the above, signed February 6, 1922.
- (3) A treaty between China and Japan, signed February 4, 1922, providing for the restoration to China of rights and interests in the Province of Shantung.

In addition, while the Conference was in session, the Government of the United States and the Government of Japan reached an agreement in relation to the Island of Yap and the mandated islands in the Pacific Ocean, north of the Equator, which is to be embodied in a formal Convention.

In other matters, not requiring treaty form, the conclusions and agreements of the Conference are embodied in a series of Resolutions, which are described below.

For convenience, these Treaties and Resolutions are set forth in an Appendix.

The proceedings of the Conference and the substance of the agreements to which reference has been made may be appropriately considered in the two main divisions already noted.

FIRST. LIMITATION OF ARMAMENT

It was recognized at the outset that it would be difficult, if not impossible, to provide at this Conference for the limitation of land forces.

So far as the army of the United States is concerned, there was no question presented. It has always been the policy of the United States to have the regular military establishment upon the smallest possible basis. At the time of the Armistice, there were in the field and in training in the American Army upwards of 4,000,000 men. At once, upon the signing of the Armistice, demobilization began and it was practically completed in the course of the following year, and to-day our regular establishment numbers less than 160,000 men. The British Empire has also reduced its land forces to a minimum. The situation on the Continent was vividly depicted in an eloquent address by M. Briand, speaking for the Government of France in which he stated his conclusions as follows:

"The thought of reducing the armaments, which was the noble purpose of this Conference, is not one from which we would feel disinterested from the point of view of land armaments. We have shown that already. Immediately after the armistice demobilization began, and demobilization began as rapidly and as completely as possible. According to the military laws

of France there are to be three classes of men; that is, three generations of young men under the flag. That law is still extant; that law is still valid. It has not been abrogated yet, and the Government has taken the responsibility to reduce to two years the time spent under the flag, and instead of three classes—three generations of young men—we have only two that are doing military service. It is therefore an immediate reduction by one-third that has already taken place in the effectives—and I am speaking of the normal effectives of the metropolis, leaving aside troops needed for colonial occupation or the obligation imposed by the treaty in Rhineland or countries under plebiscite. We did not think that endeavor was sufficient, and in the future we have plans in order to further restrict the extent of our army. In a few days it is certain that the proposals of the Government will be passed in the Chamber, and in order to further reduce the military service by half. That is to say, there will be only one class and a half actually serving. The metropolitan French army would be therefore reduced by half, but if anybody asks us to go further, to consent to other reductions, I should have to answer clearly and definitely that it would be impossible for us to do it without exposing ourselves to a most serious danger.

"You might possibly come and tell us 'This danger that you are exposed to, we see it, we realize it, and we are going to share it with you. We are going to offer you all means—put all means at your disposal in order to secure your safety.' Immediately, if we heard those words, of course we would strike upon another plan. We should be only too pleased to demonstrate the sincerity of our purpose. But we understand the difficulties and the necessities of the statesmen of other countries. We understand the position of other peoples who have also to face difficult and troublous situations. We are not selfish enough to ask other people to give a part of their sovereign national independence in order to turn it to our benefit and come to our help. We do not expect it; but here I am appealing to your consciences, if France is to remain alone, facing the situation such as I have described, and without any exaggeration—you must not deny her what she wants in order to insure her security. You must let her do what she has to do, if need arise and if the times comes."

* * *

"If by direction given to the labors of the Conference, it were possible somewhere over there in Europe—if it were possible to say that the outcome of this Conference is indirect blame and opprobrium cast upon France—if it was possible to point out France as the only country in the world that is still imperialistic, as the only country that opposes final disarmament, then, gentlemen, indeed this Conference would have dealt us a severe blow; but I am quite sure that nothing is further from your minds and from your intentions. If after listening to this argument, after weighing the reasons which you have just heard, you consider it then as valid, then, gentlemen, you will still be with us and you will agree with me in saying that France can not possibly do anything but what she has actually done."

Senator Schanzer described the Italian situation as follows:

"It is far from my mind to discuss what France considers indispensable for her national safety. That safety is as dear to us as it may be to them, and we are still morally by the side of our allies of yesterday and our friends of to-day.

"I wanted to say this. Only may I be allowed to express the wish and the hope that the general limitation of land armament may become a reality within the shortest possible space of time. Italy has fought the war for the highest aims which a country can seek, but Italy is in her soul a peace loving nation. I shall not repeat what I had the honor to state at the first meeting of the Conference, but I should like to emphasize again that Italy is one of the surest factors of the world's peace, that she has no reason whatsoever of conflict with any other country, that she is following and putting constantly into action a policy inspired by the principle of maintaining peace among all nations.

"Italy has succeeded in coming to a direct understanding with the Serb, Croat, and Slovene people and in order to attain such an end had made considerable sacrifices for the interest of the peace of Europe. Italy has pursued toward the successor countries to her former enemies a policy not only of pacification, but of assistance. And when a conflict arose between Austria and Hungary, a conflict which might have dragged into war the Danubian peoples, has offered to the two countries in conflict her friendly help in order to settle the dispute. Italy has succeeded and in so doing has actively contributed to the peace of Europe.

"Moreover, Italy has acted similarly within her own frontiers and has reduced her armed forces in the largest possible measure. She has considerably curtailed her navy expenditures in comparison to the pre-war time. The total amount of her armed forces does not exceed 200,000 men and the further reduction to 175,000 men is already planned, and 35,000 colored troops.

"Our ordinary war budget for the present financial year amounts to \$52,000,000, including \$11,000,000 expenses for police forces; the extraordinary part of the war budget, representing expenses dependent for the liquidation of the war, expenses therefore of a purely transitory character, amounts to \$62,000,000.

"However, although we have all reduced our armaments to the greatest possible extent, we consider it necessary, for a complete solution of the problem of limitation of armaments in Europe, to take into consideration the armaments of the countries either created or transformed as a result of the war. The problem is not a simple one. It must be considered as a whole. It is a serious and urgent problem, for which a solution at no far distant day is necessary."

Baron Kato spoke as follows:

"I would like to say this morning just a few words on land armament limitation. Japan is quite ready to announce her hearty approval of the principle which aims to relieve a people of heavy burdens by limiting land armaments to those which are necessary for national security and the maintenance of order within the territory.

"The size of the land armaments of each state should be determined by its peculiar geographical situation and other circumstances, and these basic factors are so divergent and complicated that an effort to draw final comparisons is hardly possible. If I may venture to say it, it is not an easy task to lay down a general scheme for the limitation of land armaments, as in the case of limitation of naval armaments. Nevertheless, Japan has not the slightest intention of maintaining land armaments which are in excess of those which as absolutely necessary for purely defensive purposes, necessitated by the Far Eastern situation."

Further consideration made it quite clear that no agreement for the limitation of land forces could be had at this time.

LIMITATION OF NAVAL ARMAMENT

A different condition existed in relation to naval armament. It was believed by the Government of the United States that an agreement providing for a sweeping reduction and for an effective limitation for the future was entirely feasible. It was pointed out, after considering the failure of earlier endeavors for limitation of armaments that the Powers could no longer content themselves with investigations, with statistics, with reports, with the circumlocution of inquiry; that the time had come, and the Conference had been called, not for general resolutions or mutual advice, but for action.

The following general considerations were deemed to be pertinent:

"The first is that the core of the difficulty is to be found in the competition in naval programs, and that, in order appropriately to limit naval armament, competition in its production must be abandoned. Competition will not be remedied by resolves with respect to the method of its continuance. One program inevitably leads to another, and if competition continues its regulation is impracticable. There is only one adequate way out and that is to end it now.

"It is apparent that this can not be accomplished without serious sacrifices. Enormous sums have been expended upon ships under construction and building programs which are now under way can not be given up without heavy loss. Yet if the present construction of capital ships goes forward other ships will inevitably be built to rival them, and this will lead to still others. Thus the race will continue so long as ability to continue lasts. The effort to escape sacrifices is futile. We must face them or yield our purpose.

"It is also clear that no one of the naval Powers should be expected to make these sacrifices alone. The only hope of limitation of naval armament is by agreement among the nations concerned, and this agreement should be entirely fair and reasonable in the extent of the sacrifices required of each of the Powers. In considering the basis of such an agreement, and the commensurate sacrifices to be required, it is necessary to have regard to the existing naval strength of the great naval Powers, including the extent of construction already effected in the case of ships in process. This follows from the fact that one nation is as free to compete as another, and each may find grounds for its action. What one may do another may demand the opportunity to rival, and we remain in the thrall of competitive effort."

But it was necessary to go beyond general observations. It was apparent that, in this field of opportunity, it was essential that the American Government, as the convener of the Conference, should be prepared with a definite and practicable plan. After the most careful consideration and detailed examination of the problem, with the aid of the experts of the American Navy, a plan was prepared and, under instructions of the President, was presented to the Conference by the American Delegation.

THE AMERICAN PLAN

It was clear at the outset, and the negotiations during the Conference put it beyond doubt, that no agreement for the limitation of naval armament could be effected which did not embrace the navies of France and Italy. At the same time, it was recognized that neither of these nations, in view of the extraordinary conditions due to the World War, affecting their existing naval strength, could be expected to make the sacrifices which necessarily would lie at the basis of an agreement for limitation. These sacrifices could, however, be reasonably expected of the United States, the British Empire, and Japan, and these were the Powers then actually engaged in the competitive building of warships. The American plan, therefore, temporarily postponed the consideration of the navies of France and Italy and definitely proposed a program of limitation for the United States, British Empire, and Japan. The proposal was one of renunciation of building programs, of scrapping of existing ships, and of establishing an agreed ratio of naval strength. It was a proposal of sacrifices, and the American Government, in making the proposal, at once stated the sacrifices which it was ready to make and upon the basis of which alone it asked commensurate sacrifices from others.

The American plan rested upon the application of these four general principles:

"(1) That all capital-shipbuilding programs, either actual or projected, should be abandoned;

"(2) That further reduction should be made through the scrapping of certain of the older ships;

"(3) That in general regard should be had to the existing naval strength of the Powers concerned;

"(4) That the capital ship tonnage should be used as the measurement of strength for navies and a proportionate allowance of auxiliary combatant craft prescribed."

More specifically, the plan in relation to capital ships was as follows:

"CAPITAL SHIPS

"United States:

"The United States is now completing its program of 1916 calling for 10 new battleships and 6 battle cruisers. One battleship has been completed. The others are in various stages of construction; in some cases from 60 to over 80 per cent of the construction has been done. On these 15 capital ships now being built over \$330,000,000 have been spent. Still, the United States is willing in the interest of an immediate limitation of naval armament to scrap all these ships.

"The United States proposes, if this plan is accepted—

"(1) To scrap all capital ships now under construction. This includes 6 battle cruisers and 7 battleships on the ways and in course of building, and 2 battleships launched.

"The total number of new capital ships thus to be scrapped is 15. The total tonnage of the new capital ships when completed would be 618,000 tons.

"(2) To scrap all of the older battleships up to, but not including, the *Delaware* and *North Dakota*. The number of these old battleships to be scrapped is 15. Their total tonnage is 227,740 tons.

"Thus the number of capital ships to be scrapped by the United States, if this plan is accepted, is 30, with an aggregate tonnage (including that of ships in construction, if completed) of 845,740 tons.

"Great Britain:

"The plan contemplates that Great Britain and Japan shall take action which is fairly commensurate with this action on the part of the United States.

"It is proposed that Great Britain—

"(1) Shall stop further construction of the four new *Hoods*, the new capital ships not laid down but upon which money has been spent. These 4 ships, if completed, would have tonnage displacement of 172,000 tons.

"(2) Shall, in addition, scrap her predreadnaughts, second-line battleships, and first-line battleships up to, but not including, the *King George V* class.

"These, with certain predreadnaughts which it is understood have already been scrapped, would amount to 19 capital ships and a tonnage reduction of 411,375 tons.

"The total tonnage of ships thus to be scrapped by Great Britain (including the tonnage of the 4 *Hoods*, if completed) would be 583,375 tons.

"Japan:

"It is proposed that Japan—

"(1) Shall abandon her program of ships not yet laid down, viz, the *Kii*, *Owari*, No. 7, and No. 8 battleships, and Nos. 5, 6, 7, and 8, battle cruisers.

"It should be observed that this does not involve the stopping of construction, as the construction of none of these ships has been begun.

"(2) Shall scrap 3 capital ships (the *Mutsu* launched, the *Tosa* and *Kago* in course of building) and 4 battle cruisers (the *Amagi* and *Akagi* in course of building, and the *Atoga* and *Takao* not yet laid down, but for which certain material has been assembled).

"The total number of new capital ships to be scrapped under this paragraph is seven. The total tonnage of these new capital ships when completed would be 289,100 tons.

"(3) Shall scrap all predreadnaughts and battleships of the second line. This would include the scrapping of all ships up to but not including the *Settsu*; that is, the scrapping of 10 older ships, with a total tonnage of 159,828 tons.

"The total reduction of tonnage on vessels existing, laid down, or for which material has been assembled (taking the tonnage of the new ships when completed), would be 448,928 tons.

"Thus, under this plan there would be immediately destroyed, of the navies of the three Powers, 66 capital fighting ships, built and building, with a total tonnage of 1,878,043.

"It is proposed that it should be agreed by the United States, Great Britain, and Japan that their navies, with respect to capital ships, within three months after the making of the agreement, shall consist of certain ships designated in the proposal and numbering for the United States 18, for Great Britain 22, for Japan, 10.

"The tonnage of these ships would be as follows: Of the United States, 500,650; of Great Britain, 604,450; of Japan, 299,700. In reaching this result, the age factor in the case of the respective navies has received appropriate consideration.

"Replacement:

"With respect to replacement, the United States proposes:

"(1) That it be agreed that the first replacement tonnage shall not be laid down until 10 years from the date of the agreement;

"(2) That replacement be limited by an agreed maximum of capital ship tonnage as follows:

	Tons.
For the United States	500,000
For Great Britain	500,000
For Japan	300,000

"(3) That subject to the 10-year limitation above fixed and the maximum standard, capital ships may be replaced when they are 20 years old by new capital ship construction;

"(4) That no capital ship shall be built in replacement with a tonnage displacement of more than 35,000 tons."

This proposal was presented on behalf of the American Delegation at the first session of the Conference, and at once evoked from the other delegates expressions of assent in principle. The question of a definite agreement, however, presented many difficulties requiring protracted negotiations, in which a conclusion was not finally reached until January 31, 1922, when the draft of the proposed Naval Treaty was adopted in the Committee on Limitation of Armament.

CAPITAL SHIP RATIO

It was obvious that no agreement for limitation was possible if the three Powers were not content to take as a basis their actual existing naval strength. General considerations of national need, aspirations and expectations, policy and program, could be brought forward by each Power in justification of some hypothetical relation of naval strength with no result but profitless and interminable discussion. The solution was to take what the Powers actually had, as it was manifest that neither could better its relative position unless it won in the race which it was the object of the Conference to end. It was impossible to terminate competition in naval armament if the Powers were to condition their agreement upon the advantages they hoped to gain in the competition itself. Accordingly, when the argument was presented by Japan that a better ratio—that is, one more favorable to Japan than that assigned by the American plan, should be adopted and emphasis was placed upon the asserted needs of Japan, the answer was made that if Japan was entitled to a better ratio upon the basis of actual existing naval strength, it should be, but otherwise it could not be, accepted. The American plan fixed the ratio between the United States, the British Empire, and Japan as 5-5-3 or 10-10-6; Great Britain at once agreed, but the Japanese Government desired a ratio of 10-10-7.

There was general agreement that the American rule for determining existing naval strength was correct, that is, that it should be determined according to capital ship tonnage. There was, however, a further question and that was as to what should be embraced for that purpose within the capital ship tonnage of each nation. It was the position of the American Government that paper programs should not be counted, but only ships laid or upon which money had been spent. It was also the position of the American Government that ships in course of construction should be counted to the extent to which construction had already progressed at the time of the convening of the Conference. The latter position was strongly contested by Japan upon the ground that a ship was not a ship unless it was completed and ready to fight. It was pointed out, however, that in case of an emergency a warship which was 90 per cent completed was to that extent ready and that only the remaining 10 per cent of construction was necessary; and, similarly, in the case of a ship 70 per cent or 50 per cent or other per cent completed the work done was so much of naval strength in hand. It was also pointed out that it did not follow that because a ship had been completed that it was ready for action; it might be out of repair; its engines, boilers, apparatus, armament, might need replacement. It was idle to attempt to determine naval strength on supposed readiness for action at a given day. Objections could be made to any standard of measurement, but the most practicable standard was to take the existing capital ship tonnage, including the percentage of construction already effected in the case of ships which were being built. It was added that the American Government, while ready to sacrifice, in accordance with the terms of its proposal, its battleships and battle cruisers in course of construction, was not willing to ignore the percentage of naval strength represented by over \$300,000,000 expended on the unfinished ships.

The American Government submitted to the British and Japanese naval experts its records with respect to the extent of the work which had been done on the ships under construction, and the negotiations resulted in an acceptance by both Great Britain and Japan of the ratio which the American Government had proposed.

FORTIFICATIONS IN THE PACIFIC

Before assenting to this ratio the Japanese Government desired assurances with regard to the increase of fortifications and naval bases in the Pacific Ocean. It was insisted that while the capital ship ratio proposed by the American Government might be acceptable under existing conditions, it could not be regarded as acceptable by the Japanese Government if the Government of the United States should fortify or establish additional naval bases in the Pacific Ocean.

The American Government took the position that it could not entertain any question as to the fortifications of its own coasts or of the Hawaiian

Islands, with respect to which it must remain entirely unrestricted. Despite the fact that the American Government did not entertain any aggressive purpose whatever, it was recognized that the fortification of other insular possessions in the Pacific might be regarded from the Japanese standpoint as creating a new naval situation, and as constituting a menace to Japan, and hence the American Delegation expressed itself as willing to maintain the *status quo* as to fortifications and naval bases in its insular possessions in the Pacific, except as above stated, if Japan and the British Empire would do the like. It was recognized that no limitation should be made with respect to the main islands of Japan or Australia and New Zealand, with their adjacent islands, any more than with respect to the insular possessions adjacent to the coast of the United States, including Alaska and the Panama Canal Zone, or the Hawaiian Islands. The case of the Aleutian Islands, stretching out toward Japan, was a special one and had its counterpart in that of the Kurile Islands belonging to Japan and reaching out to the northeast toward the Aleutians. It was finally agreed that the *status quo* should be maintained as to both these groups.

After prolonged negotiations, the three Powers—the United States, the British Empire and Japan—made an agreement that the *status quo* at the time of the signing of the Naval Treaty, with regard to fortifications and naval bases, should be maintained in their respective territories and possessions, which were specified as follows (Naval Treaty, Article XIX):

“(1) The insular possessions which the United States now holds or may hereafter acquire in the Pacific Ocean, except (a) those adjacent to the coast of the United States, Alaska and the Panama Canal Zone, not including the Aleutian Islands, and (b) the Hawaiian Islands;

“(2) Hongkong and the insular possessions which the British Empire now holds or may hereafter acquire in the Pacific Ocean, east of the meridian of 110° east longitude, except (a) those adjacent to the coast of Canada, (b) the Commonwealth of Australia and its Territories, and (c) New Zealand;

“(3) The following insular territories and possessions of Japan in the Pacific Ocean, to wit: The Kurile Islands, the Bonin Islands, Amami-Oshima, the Loochoo Islands, Formosa and the Pescadores, and any insular territories or possessions in the Pacific Ocean which Japan may hereafter acquire.”

The same article of the treaty also contains the following provision with respect to the meaning of the maintenance of the *status quo*:

“The maintenance of the *status quo* under the foregoing provisions implies that no new fortifications or naval bases shall be established in the territories and possessions specified; that no measures shall be taken to increase the existing naval facilities for the repair and maintenance of naval forces, and that no increase shall be made in the coast defences of the territories and possessions above specified. This restriction, however, does not preclude such repair and replacement of worn-out weapons and equipment as is customary in naval and military establishments in time of peace.”

THE CASE OF THE MUTSU

Among the ships which the American Government proposed should be scrapped by Japan was the *Mutsu*. It was the understanding of the American Government that this ship was still incomplete at the time of the meeting of the Conference, although it was nearly completed, that is, to the extent of about 98 per cent. It was proposed to be scrapped as all other ships which were in course of construction; thus the Government of the United States included among its own ships which were to be scrapped two ships which were about 90 per cent completed.

The Japanese Delegation, however, insisted that the *Mutsu* had actually been finished, was commissioned and fully manned before the Conference met. Apart from this point, this latest accession to the Japanese Navy was the especial pride of the Japanese people. It was their finest war vessel and, it is understood, had been built, in part at least, through popular subscriptions and in circumstances evoking patriotic pride in the highest degree.

It was deemed by the Japanese Delegation to be quite impossible to induce the consent of their Government to any proposal of limitation which would involve the scrapping of the *Mutsu*. Its retention, however, created serious difficulties because of the disproportion of advantage that would accrue to Japan through the possession of such a ship. Japan offered to scrap the *Settsu*, one of the older ships that was to have been retained by Japan under the American plan, and also recognized that the gain to Japan through the *Mutsu* should be offset by the completion on the part of the United States of two of her battleships under construction and by the construction on the part of Great Britain of two new ships.

It was accordingly agreed that the Government of the United States should finish two ships of the *West Virginia* class, that were under construction, and on their completion should scrap the *North Dakota* and the *Delaware*, which under the original plan were to have been retained. Great Britain, on her part, was to be permitted to build two new ships, and upon their completion was to scrap four (4) of the older ships which would otherwise have been retained. In this way the balance of the three navies was kept. Nor was there any serious change in the final agreement establishing the maximum limits of the capital ship replacement tonnage. The original American plan had called for the following:

United States, 500,000 tons,
British Empire, 500,000 tons,
Japan, 300,000 tons.

The plan as modified became:

United States, 525,000 tons,
British Empire, 525,000 tons,
Japan, 315,000 tons,

Thus maintaining the ratio of 5-5-3.

An important concession was made by Great Britain with respect to the two new ships which she was permitted to build. Great Britain, as stated in the American proposal, had already planned four (4) new *Hoods*. These ships had been designed and considerable time would have been saved in proceeding to build the two new ships according to the existing plans, but the new ships were designed greatly to exceed in tonnage any existing ship; their tonnage displacement, it is understood, was to be about 49,000 tons. Great Britain agreed not only to abandon her program for the four (4) new *Hoods*, but in building the two new ships that they should not exceed 35,000 tons standard displacement, respectively.

Thus, with respect to capital ships, the United States, the British Empire, and Japan were able to reach an agreement, but this was tentative and depended upon a suitable agreement being reached with France and Italy.

FRANCE AND ITALY

The scheme of reduction accepted by the United States, Great Britain, and Japan involved the scrapping of capital ships to the extent of approximately 40 per cent of the existing strength. It was realized that no such reduction could be asked of either France or Italy and that the case of their navies required special consideration.

France had seven (7) dreadnaughts with a tonnage of 164,500 tons, and three (3) predreadnaughts, making a total of about 221,000 tons. In the case of the United States, Great Britain, and Japan it was provided that their predreadnaughts should be scrapped without any provision for replacement, and there was to be, in addition, a reduction of about 40 per cent of the naval strength represented by dreadnaughts and superdreadnaughts. Reducing in the same proportion as the United States has reduced, France's tonnage of capital ships would be fixed at 102,000 tons, or, if the predreadnaughts of France were taken into the calculation on her side although omitted on the side of the United States, the total tonnage of France's capital ships being taken at 221,000 tons a reduction on the same basis would leave France with only 136,000 tons. This was deemed to be impracticable. It was thought entirely fair, however, that France, in the replacement schedule, should be allowed a maximum tonnage equivalent to the existing tonnage of her seven (7) dreadnaughts with a slight increase, that is, that the maximum limit of capital ships, for the purpose of replacement, should be fixed at 175,000 tons.

Italy sought parity with France, and this principle having been accepted in the course of the discussion, it was likewise proposed that Italy should be allowed 175,000 tons of capital ships in replacement. The present tonnage of Italy is about 182,800 tons. The proposed maximum limit of 175,000 tons was at once accepted by Italy.

France expressed the desire to be allowed 10 capital ships, which, at a tonnage of 35,000 tons each, would have given her 350,000 tons. This was

deemed to be excessive as a part of a plan for the limitation of armament, and, had it been insisted upon, would probably have made impossible an agreement for an effective limitation of capital ship tonnage. But, after discussion, France consented to the maximum limit of 175,000 tons for capital ships.

AUXILIARY CRAFT

In the original American proposal it was stated that the allowance of auxiliary combatant craft to each Power should be in proportion to the capital ship tonnage. The proposal for the three Powers—the United States, Great Britain, and Japan—was that the total tonnage of cruisers, flotilla leaders, and destroyers allowed each Power should be as follows:

United States, 450,000 tons.
Great Britain, 450,000 tons.
Japan, 270,000 tons.

And that the total tonnage of submarines allowed each of these Powers should be:

United States, 90,000 tons.
Great Britain, 90,000 tons.
Japan, 54,000 tons.

In the same proportion as the capital ship tonnage, this would have left for France and Italy, in the case of cruisers, flotilla leaders and destroyers, a maximum of 150,000 tons for each of these Powers; and, in the case of submarines, a maximum of 30,000 tons each.

The American Delegation felt that the original proposal for submarines was too high, and, aided by the advice of our naval experts, proposed that the maximum limit for the United States and Great Britain in submarine tonnage should be 60,000 tons each; and that France, Japan and Italy should retain the tonnage in submarines that they now have, that is, should maintain the *status quo* as regards submarine tonnage. It was understood that the present submarine tonnage of France was 31,391 tons; of Japan 31,452 tons, and of Italy somewhat less, about 21,000 tons. This proposition was not accepted, being opposed both by Japan and France. Japan stated her willingness to adhere to the original proposal, which allowed her 54,000 tons in submarines.

In accepting the allowance for capital ships, France had made a distinct reservation. It was said that it would be impossible for the French Government to accept reductions for light cruisers, torpedo boats and submarines corresponding to those which were accepted for capital ships. Accordingly, France maintained that her necessities required that she should be allowed 330,000 tons for cruisers, etc., and 90,000 tons for submarines.

M. Sarraut thus stated the position of the French Government:

“After examining, on the other hand, the composition of the forces needed by France in auxiliary craft and submarines, which are specially intended

for the protection of her territory and its communications, the Cabinet and the Supreme Council of National Defense, have reached the conclusion that it is impossible to accept a limitation below that of 330,000 tons for auxiliary craft and 90,000 tons for submarines, without imperiling the vital interests of the country and of its colonies and the safety of their naval life.

"The French delegation has been instructed to consent to no concession on the above figures.

"To sum up, France accepts, as regards capital ships, the sacrifice which she must face in order to meet the views of the Conference and which represents an important reduction of her normal sea power. She limits the program of the future establishment of her fleet to 330,000 tons for auxiliary craft and to 90,000 tons for submarines."

In view of the insistence on the part of the French Delegation that they could not abate their requirements as to auxiliary craft and submarines, the British Delegation stated that they were unable to consent to a limitation of auxiliary craft adapted to meet submarines.

For this reason it was found to be impossible to carry out the American plan so far as limitation of auxiliary craft and submarines was concerned.

THE NAVAL TREATY

The agreement finally reached was set forth in the Naval Treaty, signed on February 6, 1922.

With respect to capital ships, while there are certain changes in detail, the integrity of the plan proposed on behalf of the American Government has been maintained, and the spirit in which that proposal was made, and in which it was received, dominated the entire negotiations and brought them to a successful conclusion.

The Treaty is in three chapters:

- (1) A chapter containing the general principles or provisions relating to the limitation of naval armament.
- (2) A chapter containing rules for the execution of the agreement.
- (3) A chapter containing certain miscellaneous provisions.

Without following the order of this arrangement, the substance of the Treaty may be thus stated:

The first subject with which the Treaty deals is that of the limitations as to capital ships, which are defined as follows:

"A capital ship, in the case of ships hereafter built, is defined as a vessel of war, not an aircraft carrier, whose displacement exceeds 10,000 tons (10,160 metric tons) standard displacement, or which carries a gun with a caliber exceeding 8 inches (203 millimeters)." (Chapter II, Part 4.)

The Treaty specifies the capital ships which each of the five Powers may retain. Thus, the United States of America is to retain 18 capital ships, with a tonnage of 500,650 tons; the British Empire 22 capital ships, with a tonnage of 580,450 tons; France 10 ships, of 221,170 tons; Italy 10 ships, of 182,800 tons; Japan 10 ships, of 301,320 tons. (Chapter II, Part 1.)

In reaching this result, the age factor in the case of the respective navies has received consideration.

The Treaty provides that all other capital ships of these Powers, either built or building, are to be scrapped or disposed of as provided in the Treaty. (Article II).

It is provided that the present building programs are to be abandoned and that there is to be no building of capital ships hereafter, except in replacement and as the Treaty provides. (Article III.)

It may be useful to make a comparison of this result with the proposal which was made at the beginning of the Conference on behalf of the American Delegation. That proposal set forth that 18 ships were to be retained by the United States with a tonnage of 500,650 tons. In this Treaty the same ships are to be retained.

In that proposal there were set forth 22 capital ships to be retained by the British Empire. Under the Treaty the same number of ships is to be retained, in fact, the same ships, with the single exception of the substitution of the *Thunderer* for the *Erin*, with a total tonnage of 580,450, as against the calculation in the original proposal of 604,450 tons for ships retained.

In the case of Japan, the proposal set forth 10 ships to be retained. By the Treaty, the same number of ships is to be retained, the difference being that the *Mutsu* is to be retained and the *Settsu* (which was to have been retained) is to be scrapped. The tonnage retained by Japan, as calculated in the original proposal, was 299,700 tons. The tonnage retained under the Treaty is 301,320.

The effect of the retention of the *Mutsu* by Japan was to make necessary certain changes to which reference has already been made, and for which the Treaty provides. These changes are:

In the case of the United States, it is provided that two ships of the *West Virginia* class, now under construction, may be completed, and that on their completion two of the ships which were to have been retained, the *North Dakota*, and the *Delaware*, are to be scrapped.

In the case of the British Empire, two new ships may be built, not exceeding 35,000 tons each; and on completion of these two ships, four ships, the *Thunderer*, *King George V*, the *Ajax*, and the *Centurion*, are to be scrapped.

In the case of Japan, as has been said, the difference is that the *Mutsu* is retained and the *Settsu* scrapped.

Aside from these changes, the principles set forth in the American proposal in relation to capital ships have been applied, and the capital ship program is in its essence carried out.

A further comparison may be made with respect to ships to be scrapped.

In the case of the United States, it was proposed to scrap all capital ships now under construction, that is to say 15 ships, in various stages of construction. Instead, 13 of these ships are to be scrapped or disposed of. The total number of capital ships which were to be scrapped by the United States, or

disposed of, was stated to be 30. Under the Treaty, the number is 28, with a very slight difference in total tonnage.

In the case of Great Britain, the construction of the 4 great *Hoods* has been abandoned, and while Great Britain is to have 2 new ships, limited to 35,000 tons each, 4 of the retained ships are to be scrapped, as already stated, when these two ships are completed.

It was also provided in the original proposal that Great Britain should scrap her predreadnaughts, second line battleships and first line battleships, up to and not including the *King George V*. These ships, with certain predreadnaughts which it was understood had already been scrapped, would amount to 19 capital ships, with a tonnage reduction on this account of 411,375 tons. This provision is substantially unaffected by the Treaty, the fact being that under the Treaty 20 ships are to be scrapped instead of 19 that were mentioned in the proposal.

In the case of Japan, the proposal was that Japan—

“(1) Shall abandon her program of ships not yet laid down, viz, the *Kii*, *Owari*, No. 7 and No. 8, battleships, and Nos. 5, 6, 7, and 8, battle cruisers.”

This proposal has been carried out and the program has been abandoned by Japan.

“(2) Shall scrap 3 capital ships (the *Mutsu*, launched; the *Tosa* and *Kago*, in course of building) and 4 battle cruisers (the *Amagi* and *Akagi* in course of building, and the *Atoga* and *Takao* not yet laid down, but for which certain material has been assembled). The total number of new capital ships to be scrapped under this program is 7. The total tonnage of these capital ships when completed would be 289,100 tons.”

Under the Treaty Japan is to scrap all the ships mentioned with the exception of the *Mutsu*.

“(3) Shall scrap all predreadnaughts and battleships of the second line. This would include the scrapping of all ships up to but not including the *Settsu*; that is, the scrapping of 10 older ships with a total tonnage of 159,828 tons.”

Under the Treaty 10 ships are scrapped, including the *Settsu* instead of excluding it.

There are certain special provisions with regard to capital ships which should be mentioned in order that there may be no misapprehension, although the matter itself is insignificant. In the tables in Section II of Chapter II, Part 3, it is provided that the United States may retain the *Oregon* and *Illinois* for noncombatant purposes after they have been emasculated in accordance with certain provisions of the Treaty. There is a sentimental reason for the retention of the *Oregon*, which it is understood the State of Oregon desires to possess.

The British Empire is permitted to retain the *Colossus* and the *Collings-*

wood for noncombatant purposes after they have been emasculated. These have already been withdrawn from combatant use.

There is also a provision in the case of Japan that 2 of her older ships, over 20 years old, the *Shikashima* and the *Asahi*, which were to be scrapped may be retained for noncombatant purposes after they have been emasculated, as stated.

The matter of scrapping is not left to conjecture or to the decision of each of the Powers taken separately, but is carefully defined by the Treaty in Part 2 of Chapter II, as follows:

"RULES FOR SCRAPPING VESSELS OF WAR

"I. A vessel to be scrapped must be placed in such a condition that it can not be put to combatant use.

"II. This result must be finally effected in any one of the following ways.

(a) Permanent sinking of the vessel;

(b) Breaking the vessel up. This shall always involve the destruction or removal of all machinery, boilers, and armor, and all deck, side, and bottom plating;

(c) Converting the vessel to target use, exclusively * * * Not more than one capital ship may be retained for this purpose at one time by any of the Contracting Powers."

There is a special provision in the case of France and Italy that they may severally retain two seagoing vessels for training purposes exclusively; that is, as gunnery or torpedo schools. The Treaty describes the vessels, or the class to which they belong, and France and Italy undertake to remove and destroy their conning towers and not to use them as vessels of war.

There is also provision as to the two stages of scrapping. The first stage is intended to render the ship incapable of further warlike service and is to be immediately undertaken. The process is set forth in great detail in respect to removal of guns or machinery for working hydraulic or electric mountings, or fire-control instruments and range finders, or ammunition, explosives, and mines, or torpedoes, war-heads and torpedo tubes, or wireless telegraphy installations, the conning tower and all side armor, etc. (Chapter II, Part 2, Section III, Sub Division A.)

In the case of vessels that are to be immediately scrapped, the work of rendering them incapable of further warlike service is to be completed within six months from the time of the coming into force of the Treaty and the scrapping is to be finally effected within 18 months from that time. In the case of vessels which are to be scrapped after the completion of the new ships which may be built by the United States and the British Empire respectively, the work of rendering the vessel incapable of further warlike service is to be commenced not later than the date of the completion of its successor and is to be finished within six months from that time. The vessel is to be finally scrapped within 18 months from that date.

The Treaty provides the maximum replacement limits as follows:

United States.....	525,000 tons
British Empire.....	525,000 tons
France.....	175,000 tons
Italy.....	175,000 tons
Japan.....	315,000 tons

The size of each of the capital ships is limited to 35,000 tons; it is also provided that no capital ship shall carry a gun of a caliber in excess of 16 inches. The provisions for replacements of capital ships are set forth in charts which form Section II of Part 3 of Chapter II of the Treaty.

In the case of the United States, the British Empire and Japan, aside from the two ships that may be completed by the United States and the two which may be built by the British Empire, the first replacement is to begin with the laying down of ships in the year 1931, for completion in 1934, and replacement takes place thereafter according to the age of the ships.

In the case of France and Italy, the first replacement is permitted for laying down in 1927 for completion in 1930 in the case of France, and in 1931 in the case of Italy.

The Treaty also deals with aircraft carriers.

"An aircraft carrier is defined as a vessel of war with a displacement in excess of 10,000 tons (10,160 metric tons) standard displacement designed for the specific and exclusive purpose of carrying aircraft. It must be so constructed that aircraft can be launched therefrom and landed thereon, and not designed and constructed for carrying a more powerful armament than that allowed to it under Article IX or Article X, as the case may be." (Chapter II, Part 4.)

The total tonnage allowed for aircraft carriers is limited as follows: (Article VII.)

For the United States.....	135,000 tons
British Empire.....	135,000 tons
France.....	60,000 tons
Italy.....	60,000 tons
Japan.....	81,000 tons

In view of the experimental nature of the existence of aircraft carriers, that fact is recognized and there is provision for replacement without regard to age. (Article VIII.)

The maximum limit of each aircraft carrier is 27,000 tons. There is, however, a special exception which permits Contracting Powers to build not more than two aircraft carriers, each of a tonnage of not more than 33,000 tons.

What has been said with regard to the disposition of existing capital ships and their scrapping, is to be qualified by the statement that in order to effect economy, any of the Contracting Powers may use, for the purpose of constructing aircraft carriers as defined, any two of their ships, whether

constructed or in course of construction, which would otherwise be scrapped under the Treaty, and these may be of a tonnage of not more than 33,000 tons. (Article IX.)

The general provision as to the armament of aircraft carriers is that if it has guns exceeding six inches, the total number of guns shall not exceed 10. It cannot carry a gun in excess of 8 inches. It may carry without limit 5-inch guns and anti-aircraft guns. (Article X.)

In the case of aircraft carriers of 33,000 tons, the total number of guns to be carried, in case any of such guns are of caliber exceeding 6 inches, except anti-aircraft guns and guns not exceeding five inches, can not number more than 8. (Article IX.)

With respect to auxiliary craft, the Treaty provides that no vessel of war exceeding 10,000 tons, other than capital ships or aircraft carriers, shall be acquired by, or constructed by, for, or within the jurisdiction of any of the Contracting Powers. Vessels not specially built as fighting ships, nor taken in time of peace under Government control for fighting purposes, which are employed on fleet duties, or as troop transports, or in some other way for the purpose of assisting in the prosecution of hostilities, otherwise than as fighting ships, are not within this limitation. (Article XI.)

The Treaty contains certain provisions of a protective nature, that is, for the purpose of securing the faithful execution of the agreement.

Thus, it is provided that no vessel of war of any of the Contracting Powers, hereafter laid down, except a capital ship, shall carry a gun in excess of 8 inches (Article XII); that no ship designated in the Treaty to be scrapped may be reconverted into a vessel of war (Article XIII); that no preparations shall be made in merchant ships in time of peace for the installation of war-like armament for the purpose of converting such ships into vessels of war, other than the necessary stiffening of the decks for the mounting of guns not exceeding 6 inches. (Article XIV.)

There are also provisions with respect to the building of vessels for foreign powers. Thus, no vessel of war constructed within the jurisdiction of any of the Contracting Powers, for a noncontracting power, shall exceed the limits as to displacement and armament prescribed by the Treaty for vessels of a similar type, constructed by or for any of the Contracting Powers; provided, however, that the displacement for aircraft carriers constructed for a noncontracting power shall not exceed 27,000 tons. (Article XV.)

It is provided that a Contracting Power, within the jurisdiction of which a vessel of war is constructed for a noncontracting power, shall give suitable information to the other Contracting Powers. (Article XVI.)

Further, in the event of a Contracting Power being engaged in war, such Power is not to use as a vessel of war any vessel of war which may be under construction within its jurisdiction for any other power or which may have been constructed within its jurisdiction for another power and not delivered. (Article XVII.)

Each of the Contracting Powers undertakes not to dispose, by gift, sale, or any mode of transfer, of any vessel of war in such a manner that such vessel may become a vessel of war in the navy of any foreign power (Article XVIII). It is recorded in the proceedings of the Conference that this undertaking is regarded as binding as a matter of honor upon the Powers from the date of the signing of the Treaty.

Reference has already been made to the provision relating to the maintenance of the status quo as to fortifications and naval bases in the Pacific Ocean.

If, during the term of the Treaty, which is 15 years, the requirements of the national security of any of the Contracting Powers, in respect of naval defense are, in the opinion of that Power, materially affected by any change of circumstances, the Contracting Powers agree, at the request of such Power, to meet in conference with a view to the reconsideration of the provisions of the Treaty and its amendment by mutual agreement. (Article XXI.)

It is further provided that in view of possible technical and scientific developments the United States, after consultation with the other Contracting Powers, shall arrange for a Conference of all the Contracting Powers, which shall convene as soon as possible after the expiration of 8 years from the coming into force of the Treaty, to consider what changes, if any, may be necessary to meet such developments. (Article XXI.)

There is a special provision as to the effect of an outbreak of war. The mere fact that one of the Contracting Powers becomes engaged in war does not affect the obligations of the Treaty. But if a Contracting Power becomes engaged in a war which, in its opinion, affects the naval defense of its national security, such Power may, after notice to the other Contracting Powers, suspend for the period of hostilities its obligations under the present Treaty, other than certain specified obligations, provided that such Power shall notify the other Contracting Powers that the emergency is of such a character as to require such suspension. In such a case the remaining Contracting Powers agree to consult together and ascertain what temporary modifications may be required. If such consultation does not produce an agreement, duly made in accordance with the constitutional methods of the respective Powers, any one of the Contracting Powers may, by giving notice to the other Contracting Powers, suspend for the period of hostilities its obligations under the present Treaty, except as specified. On the cessation of hostilities the Contracting Powers agree to meet in Conference to consider what modifications, if any, should be made in the provisions of the Treaty. (Article XXII.)

The Treaty is to remain in force until December 31, 1936, and in case none of the Contracting Powers shall have given notice two years before that date of its intention to terminate the Treaty, it is to continue in force until the expiration of two years from the date on which notice of termination shall be given by one of the Contracting Powers; whereupon the Treaty shall terminate as regards all the Contracting Powers. (Article XXIII.)

This is a summary of the engagements of the Naval Treaty. Probably no more significant treaty was ever made. Instead of discussing the desirability of diminishing the burdens of naval armament, the Conference has succeeded in limiting them to an important degree.

It is obvious that this agreement means ultimately an enormous saving of money and the lifting of a heavy and unnecessary burden. The Treaty absolutely stops the race in competition in naval armament. At the same time it leaves the relative security of the great naval powers unimpaired. No national interest has been sacrificed; a wasteful production of unnecessary armament has been ended.

While it was desired that an agreement should be reached for the limitation of auxiliary craft and submarines, its importance should not be overestimated. Limitation has been effected where it was most needed, both with respect to the avoidance of the heaviest outlays and with reference to the promptings to war, which may be found in excessive preparation. Moreover, it is far from probable that the absence of limitation, in the other field, will lead to production of either auxiliary craft or submarines in excess of their normal relation to capital ships. Peoples are not in a mood for unnecessary naval expenditures.

The limitation of capital ships, in itself, substantially meets the existing need, and its indirect effect will be to stop the inordinate production of any sort of naval craft.

RULES FOR CONTROL OF NEW AGENCIES OF WARFARE

Submarines

The British Delegation submitted a proposition for the abolition of submarines. This proposal was put upon the records in the following form:

"The British Empire Delegation desired formally to place on record this opinion that the use of submarines whilst of small value for defensive purposes, leads inevitably to acts which are inconsistent with the laws of war and the dictates of humanity, and the Delegation desires that united action should be taken by all nations to forbid their maintenance, construction, or employment."

The proposal was discussed at length, the British Delegation bringing forward in its support arguments of great force based upon the experience of Great Britain in the recent war. It met with opposition from France, Italy, and Japan.

The American Delegation not only had the opinion of their naval advisers in opposition to the proposal, but also had received a careful report upon the subject from the Advisory Committee of Twenty-One appointed by the President. This report was presented by the American Delegation as setting forth in a succinct manner the position of their Government. In this report it was stated:

"Unlimited submarine warfare should be outlawed. Laws should be drawn up prescribing the methods of procedure of submarines against merchant vessels both neutral and belligerent. These rules should accord with the rules observed by surface craft. Laws should also be made which prohibit the use of false flags and offensive arming of merchant vessels. The use of false flags has already ceased in land warfare. No one can prevent an enemy from running 'amuck' but immediately he does, he outlaws himself and invites sure defeat by bringing down the wrath of the world upon his head. If the submarine is required to operate under the same rule as combatant surface vessels no objection can be raised as to its use against merchant vessels. The individual captains of submarines are no more likely to violate instructions from their government upon this point than are captains of any other type of ship acting independently.

"SUBMARINES AGAINST COMBATANT SHIPS

"Against enemy men of war the submarine may be likened to the advance guard on land which hides in a tree or uses underbrush to conceal itself. If the infantry in its advance encounters an ambush, it suffers greatly even if it is not totally annihilated. However, an ambush is entirely legitimate. In the same fashion a submarine strikes the advancing enemy from concealment and no nation cries out against this form of attack as illegal. Its Navy simply becomes more vigilant, moves faster and uses its surface scouts to protect itself.

"The submarine carries the same weapons as surface vessels, i. e., torpedoes, mines, and guns. There is no prohibition of their use on surface craft and there can be none on submarines. Submarines are particularly well adapted to use mines and torpedoes. They can approach to the desired spot without being seen, lay their mines or discharge their torpedoes and make their escape.

"The best defense against them is eternal vigilance and high speed. This causes added fatigue to the personnel and greater wear to the machinery. The continual menace of submarines in the vicinity may so wear down a fleet that when it meets the enemy it will be so exhausted as to make its defeat a simple matter.

"The submarine as a man-of-war has a very vital part to play. It has come to stay. It may strike without warning against combatant vessels, as surface ships may do also, but it must be required to observe the prescribed rules of surface craft when opposing merchantmen, as at other times.

"THE SUBMARINE AS A SCOUT

"As a scout the submarine has great possibilities—it is the one type of vessel able to proceed unsupported into distant enemy waters and maintain itself to observe and report enemy movements. At present its principal handicaps are poor habitability and lack of radio power to transmit its information. However, these may be overcome in some degree in the future. Here, again, the submarine has come to stay—it has great value, a legitimate use, and no nation can decry its employment in this fashion.

* * *

"The submarine is particularly an instrument of weak naval powers. The business of the world is carried on upon the surface of the sea. Any navy which is dominant on the surface prefers to rely on that superiority.

While navies comparatively weak, may but threaten that dominance by developing a new form of attack to attain success through surprise. Hence submarines have offered and secured advantages until the method of successful counterattack has been developed.

"The United States Navy lacks a proper number of cruisers. The few we have would be unable to cover the necessary area to obtain information. Submarines could greatly assist them as they can not be driven in by enemy scouts.

"The cost per annum of maintaining 100,000 tons of submarines fully manned and ready is about thirty million dollars. For the work which will be required of them in an emergency, this cost is small when taken in connection with the entire Navy. The retention of a large submarine force may at some future time result in the United States holding its outlying possessions. If these colonies once fall the expenditure of men necessary to recapture them will be tremendous and may result in a drawn war which would really be a United States defeat. The United States needs a large submarine force to protect its interests.

"The Committee is therefore of the opinion that unlimited warfare by submarines on commerce should be outlawed. The right of visit and search must be exercised by submarines under the same rules as for surface vessels. It does not approve limitation in size of submarines."

Illegal Submarine Warfare—Use of Submarines Against Merchant Ships—Poison Gas

While the Conference was unable either to abolish or to limit submarines, it stated, with clarity and force, the existing rules of international law which condemned the abhorrent practices followed in the recent war in the use of submarines against merchant vessels. The resolutions adopted by the Conference as to the use of submarines against merchant vessels, and with respect to the use of poison gas, were put in the form of a treaty which was signed on February 6, 1922. The substantive portions of this Treaty are as follows:

"I

"The Signatory Powers declare that among the rules adopted by civilized nations for the protection of the lives of neutrals and noncombatants at sea in time of war, the following are to be deemed an established part of international law;

"(1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

"A merchant vessel must not be attacked unless it refuse to submit to visit and search after warning, or to proceed as directed after seizure.

"A merchant vessel must not be destroyed unless the crew and passengers have been first placed in safety.

"(2) Belligerent submarines are not under any circumstances exempt from the universal rules above stated; and if a submarine can not capture a merchant vessel in conformity with these rules the existing law of nations requires it to desist from attack and from seizure and to permit the merchant vessel to proceed unmolested.

"II

"The Signatory Powers invite all other civilized Powers to express their assent to the foregoing statement of established law so that there may be a clear public understanding throughout the world of the standards of conduct by which the public opinion of the world is to pass judgment upon future belligerents.

"III

"The Signatory Powers, desiring to insure the enforcement of the humane rules of existing law declared by them with respect to attacks upon and the seizure and destruction of merchant ships, further declare that any person in the service of any Power who shall violate any of these rules, whether or not such person is under orders of a governmental superior, shall be deemed to have violated the laws of war and shall be liable to trial and punishment as if for an act of piracy and may be brought to trial before the civil or military authorities of any Power within the jurisdiction of which he may be found.

"IV

"The Signatory Powers recognize the practical impossibility of using submarines as commerce destroyers without violating, as they were violated in the recent war of 1914-1918, the requirements universally accepted by civilized nations for the protection of the lives of neutrals and noncombatants, and to the end that the prohibition of the use of submarines as commerce destroyers shall be universally accepted as a part of the law of nations they now accept that prohibition as henceforth binding as between themselves and they invite all other nations to adhere thereto.

"V

"The use in war of asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices, having been justly condemned by the general opinion of the civilized world and a prohibition of such use having been declared in treaties, to which a majority of the civilized Powers are parties.

"The Signatory Powers, to the end that this prohibition shall be universally accepted as a part of international law binding alike the conscience and practice of nations, declare their assent to such prohibition, agree to be bound thereby as between themselves and invite all other civilized nations to adhere thereto."

Mr. Root, in presenting this Treaty for the approval of the Conference, said:

"You will observe that this treaty does not undertake to codify international law in respect of visit, search or seizure of merchant vessels. What it does undertake to do is to state the most important and effective provisions of the law of nations in regard to the treatment of merchant vessels by belligerent warships, and to declare that submarines are, under no circumstances, exempt from these humane rules for the protection of the life of innocent noncombatants.

"It undertakes further to stigmatize violation of these rules, and the doing to death of women and children and noncombatants by the wanton destruction of merchant vessels upon which they are passengers and by a violation

of the laws of war, which as between these five great powers and all other civilized nations who shall give their adherence shall be henceforth punished as an act of piracy.

"It undertakes further to prevent temptation to the violation of these rules by the use of submarines for the capture of merchant vessels, and to prohibit that use altogether. It undertakes further to denounce the use of poisonous gases and chemicals in war, as they were used to the horror of all civilization in the war of 1914-1918.

"Cynics have said that in the stress of war these rules will be violated. Cynics are always near-sighted, and often and usually the decisive facts lie beyond the range of their vision.

"We may grant that rules limiting the use of implements of warfare made between diplomatists will be violated in the stress of conflict. We may grant that the most solemn obligation assumed by governments in respect of the use of implements of war will be violated in the stress of conflict; but beyond diplomatists and beyond governments there rests the public opinion of the civilized world, and the public opinion of the world can punish. It can bring its sanction to the support of a prohibition with as terrible consequences as any criminal statute of Congress or of Parliament.

"We may grant that in matters which are complicated and difficult, where the facts are disputed and the argument is sophistic, public opinion may be confused and ineffective, yet when a rule of action, clear and simple, is based upon the fundamental ideas of humanity and right conduct, and the public opinion of the world has reached a decisive judgment upon it, that rule will be enforced by the greatest power known to human history, the power that is the hope of the world, will be a hope justified."

COMMISSION TO REVISE RULES OF WAR

The Conference adopted the following Resolution for the appointment of a commission to examine the rules made necessary by recent experience with respect to new agencies of warfare:

"I. That a Commission composed of not more than two members representing each of the above-mentioned Powers shall be constituted to consider the following questions:

"(a) Do existing rules of International Law adequately cover new methods of attack or defense resulting from the introduction or development, since the Hague Conference of 1907, of new agencies of warfare?

"(b) If not so, what changes in the existing rules ought to be adopted in consequence thereof as a part of the law of nations?

"II. That notices of appointment of the members of the Commission shall be transmitted to the Government of the United States of America within three months after the adjournment of the present Conference, which after consultation with the Powers concerned will fix the day and place for the meeting of the Commission.

"III. That the Commission shall be at liberty to request assistance and advice from experts in International Law and in land, naval, and aerial warfare.

"IV. That the Commission shall report its conclusions to each of the Powers represented in its membership.

"Those Powers shall thereupon confer as to the acceptance of the report and the course to be followed to secure the consideration of its recommendations by the other civilized Powers."

A further resolution was adopted at the same time, as follows:

"Resolved, That it is not the intention of the Powers agreeing to the appointment of a Commission to consider and report upon the rules of International Law respecting new agencies of warfare that the Commission shall review or report upon the rules or declarations relating to submarines or the use of noxious gases and chemicals already adopted by the Powers in this Conference."

AIRCRAFT

It was found to be impracticable to adopt rules for the limitation of aircraft in number, size, or character, in view of the fact that such rules would be of little or no value unless the production of commercial aircraft were similarly restricted. It was deemed to be inadvisable thus to hamper the development of a facility which could not fail to be important in the progress of civilization.

SECOND. PACIFIC AND FAR EASTERN QUESTIONS

When the Conference was called there existed with regard to the Far East causes of misunderstanding and sources of controversy which constituted a serious potential danger. These difficulties centered principally about China, where the developments of the past quarter of a century had produced a situation in which international rivalries, jealousies, distrust, and antagonism were fostered.

The people of China are the inheritors of the oldest extant civilization of the world; but it is a civilization which has followed a course of development different from that of the West. It has almost wholly ignored the material, the mechanical, the scientific, and industrial mastery of natural resources, which has so characterized our Western civilization in its later growth, and has led among us to the creation of an intricate industrial system. The spirit of Chinese civilization has, moreover, been pacifist, and lacking in the consciousness of nationality as we understand that term. In its political aspects, the ideal of that civilization was to follow the principle of self-government by the family or guild to an extreme. The throne had imposed upon the people virtually no authority and exercised virtually no functions save to preserve order and to collect taxes for the maintenance of the throne as a symbol of national or racial unity.

So long as China lived as a race apart, as a self-contained agricultural country, such a political idea was possible of realization; and we who are the inheritors of so different a tradition can not but pay respect to China's civilization.

It is perhaps one of the tragedies of human evolution that the fine civilization which had developed in China and which had spread to other lands of eastern Asia was of necessity withered by contact with our more material western system of living. The Asiatic nations seem to have been conscious of this in their early contacts with the European world; and for a time they

sought to exclude the new influences. Failing in that, they met the problem in different ways. Japan, with its highly centralized system, which, in marked contrast with the political ideals of China, had instilled into its people a national consciousness and loyalty and obedience in a singular degree, had found it possible within a comparatively few decades to adapt itself to membership in the family of modern nations; and by what is doubtless the most extraordinary transformation in history, took on so much of the material development and political tradition of the West as enabled her empire to become what it is to-day, one of the foremost nations of the world.

China, on the other hand, with its age-long devotion to a political ideal which scarcely involved the concept of the State, and which had afforded its people no experience of coordinated action for political ends, was slower to adapt itself to conditions arising out of what it regarded as the intrusion of the West. Even after it had ceased actually to oppose this intrusion, it still sought to hold itself aloof and to carry on a passive resistance to the new influences which were at work. Against powerful, well-knit governments of the European type, strongly nationalistic, and in some instances availing themselves of military force, China could oppose only the will of a weak and loose-knit government, lacking even the support of a national self-consciousness on the part of its people. Against the organized commercial and industrial enterprises of the West, China had no similar organization to oppose, and no means of exploiting on any adequate scale the coveted latent wealth of the country. It was melancholy but perhaps inevitable that a realization of this situation should have led to a scramble among the Powers of greatest military and industrial strength with a view to obtaining the fullest possible opportunity to profit by the riches and the weakness of China. In this scramble, not only were the rights of China ignored or violated, but a number of the stronger Powers found themselves in a situation of mutual antagonism as a result.

It was in the midst of this scramble, in the year 1899, that Secretary Hay sought to establish the principle of the open door and to obtain general acceptance for certain concrete applications of it which at least would minimize the existing danger. And when, in the following year, a portion of the Chinese people were beguiled into the futile antiforeign protest that we know as the Boxer Uprising, Secretary Hay joined with the open-door principle its corollary, that is, the preservation of Chinese territorial and administrative integrity. These two related principles have since had their influence in restraint of the temptation to encroach upon the rights of China or upon the rights of other friendly states in China. But it is unfortunately the fact that these principles, helpful as they might have been, were never a matter of binding international obligation among all the powers concerned; and although generally professed, they were in some instances disregarded, and each such case afforded an excuse and a temptation to treat them thereafter more and more as mere counsels of perfection for which no nation could

be held strictly to account. This disintegrating tendency had become more marked in the period following China's overthrow of its ancient dynasty and its assumption of the status of a republic. This development has inevitably brought with it a period of transition.

The democratic system of government represents the final and most difficult stage in the political experience of a people; and its adoption has universally been accompanied, as it was in our own case, by a period of painful adjustment to new and difficult requirements. In China, perhaps, the singular lack of political experience, or even of a helpful governmental tradition, made this development infinitely difficult, and for approximately ten years China has been exhibiting the weakness and political disturbance which seem to be the price that must be paid for the institution of popular government. In these circumstances, the weakening of the restraints upon the action of foreign nations seeking to participate in the economic development of China has perhaps not unnaturally led to a greater indifference to China's rights and interests, and to a greater disregard of the dangers arising out of international rivalries.

A situation had thus been created in which the Chinese people nursed a sense of grievance and even of outrage; and the foreign nations found their relations complicated by mutual suspicion and resentment.

Throughout considerable areas of the territory of China claims were made to so-called spheres of interest which not only placed a check upon the normal economic development of the country and interfered with its administration, but also sought to restrict the free commercial intercourse of those peoples, which, like ourselves, considered that they had a full right, with the sanction of treaty engagements, to deal without control or interference with the Chinese people in whatever part of China and in whatever sort of legitimate business or enterprise they might find mutually profitable.

Such was the unhealthy situation that had come to exist in the Far East; and those who regarded it with a view to its effects upon the relationships of the several nations concerned could not but be conscious that plans for the limitation of armaments could scarcely have more than a temporary success if it were not possible to dispel the growing sense of uneasiness and mutual distrust which had arisen out of those conditions.

THE ANGLO-JAPANESE ALLIANCE

It may be stated without reservation that one of the most important factors in the Far Eastern situation was the Anglo-Japanese Alliance. This Alliance has been viewed by the people of the United States with deep concern. Originally designed as a measure of protection in view of the policies of Russia and Germany in Far Eastern affairs, the continuance of the Alliance after all peril from those sources had ceased could not fail to be regarded as seriously prejudicial to our interests. Without reviewing the reasons for this disquietude, it was greatly increased by the "state of international ten-

sion" which had arisen in the Pacific area. The question constantly recurred: The original sources of danger having been removed, against whom and for what purposes was the Alliance maintained? The difficulty lay in the fact that the Treaty was not one that had to be renewed. It ran until it was formally denounced by one of the two parties. Great Britain accordingly found itself, as Mr. Balfour has expressed it, "between the possibilities of two misunderstandings—a misunderstanding if they retained the Treaty, a misunderstanding if they denounced the Treaty."

It was, therefore, a matter of the greatest gratification that the American Delegation found that they were able to obtain an agreement by which the Anglo-Japanese Alliance should be immediately terminated. No greater step could be taken to secure the unimpeded influence of liberal opinion in promoting peace in the Pacific region.

THE FOUR-POWER TREATY

This agreement between the United States, British Empire, France, and Japan, which was signed on December 13, 1921, provided as follows:

I

"The High Contracting Parties agree as between themselves to respect their rights in relation to their insular possessions and insular dominions in the region of the Pacific Ocean.

"If there should develop between any of the High Contracting Parties a controversy arising out of any Pacific question and involving their said rights which is not satisfactorily settled by diplomacy and is likely to affect the harmonious accord now happily subsisting between them, they shall invite the other High Contracting Parties to a joint conference to which the whole subject will be referred for consideration and adjustment.

II

"If the said rights are threatened by the aggressive action of any other Power, the High Contracting Parties shall communicate with one another fully and frankly in order to arrive at an understanding as to the most efficient measures to be taken, jointly or separately, to meet the exigencies of the particular situation.

III

"This Treaty shall remain in force for ten years from the time it shall take effect, and after the expiration of said period it shall continue to be in force subject to the right of any of the High Contracting Parties to terminate it upon twelve months' notice.

IV

"This Treaty shall be ratified as soon as possible in accordance with the constitutional methods of the High Contracting Parties and shall take effect on the deposit of ratifications, which shall take place at Washington, and thereupon the agreement between Great Britain and Japan, which was concluded at London on July 13, 1911, shall terminate."

It was accompanied by the following statement signed at the same time:

"In signing the Treaty this day between The United States of America, The British Empire, France, and Japan it is declared to be the understanding and intent of the Signatory Powers:

"1. That the Treaty shall apply to the Mandated Islands in the Pacific Ocean; provided, however, that the making of the Treaty shall not be deemed to be an assent on the part of The United States of America to the mandates and shall not preclude agreements between The United States of America and the Mandatory Powers respectively in relation to the mandated islands.

"2. That the controversies to which the second paragraph of Article I refers shall not be taken to embrace questions which according to principles of international law lie exclusively within the domestic jurisdiction of the respective Powers."

Accordingly, the signing of the Treaty on the part of the United States was subject to the making of a convention with Japan concerning the status of the Island of Yap and what are termed the mandated islands in the Pacific Ocean north of the Equator, the negotiations in regard to which have been concluded, and also to the reservations with respect to what are termed the mandated islands in the Pacific Ocean south of the Equator. The position of the United States in regard to mandates is not in any way affected by this Treaty.

Further, it is distinctly stated that the controversies to which the Treaty refers do not embrace questions which, according to principles of international law, lie exclusively within the domestic jurisdiction of the respective Powers. Illustrations of questions of this sort are immigration and tariff matters, so far as they are unaffected by existing treaties.

It will be observed that the Treaty relates only to "insular possessions and insular dominions." It contains no provision with respect to continental territory either in the East or in the West.

Under Article I, the parties do not agree to give any support to claims, but only to respect rights that actually exist. When controversies arise of the character stated in the Article, the Powers merely agree to confer together concerning them. No Power binds itself to anything further; and any consents or agreements must be reached in accordance with its constitutional methods. The reference to "consideration and adjustment" does not imply that any agreement can be made at a conference relating to a controversy which would be binding upon the United States, unless that agreement is made by constitutional authority. The present Treaty promises not an agreement of any sort, but merely consultation. The same is true of the provision in Article II.

As Senator Lodge said, in communicating the terms of the Treaty to the Conference:

"To put it in a few words, the treaty provides that the four signatory powers will agree as between themselves to respect their insular possessions

and dominions in the region of the Pacific, and that if any controversy should arise as to such rights, all the high contracting parties shall be invited to a joint conference looking to the adjustment of such controversy. They agree to take similar action in the case of aggression by any other power upon these insular possessions or dominions. The agreement is to remain in force for 10 years, and after ratification under the constitutional methods of the high contracting parties the existing agreement between Great Britain and Japan, which was concluded at London on July 13, 1911, shall terminate. And that is all. Each signer is bound to respect the rights of the others and before taking action in any controversy to consult with them. There is no provision for the use of force to carry out any of the terms of the agreement, and no military or naval sanction lurks anywhere in the background or under cover of these plain and direct clauses."

This statement was made in open Conference, in the presence of all the Delegates who signed the Treaty, and must be regarded as an authoritative and accepted exposition of its import.

A question arose whether the main islands of Japan were within the scope of the Treaty. This had been considered while the Treaty was being negotiated, and it had been understood that they had been included. The words "insular possessions and insular dominions" were deemed comprehensively to embrace all islands of the respective powers in the region described.

The American Delegation did not regard it as important whether the main islands of Japan were included or excluded, save that it was understood that their exclusion might give rise to difficulties with respect to the position of Australia and New Zealand. After the Treaty was signed, it became apparent that in view of the sentiment both in this country and in Japan, it would be preferable to exclude the main islands of Japan from the Treaty, and it was ascertained that Australia and New Zealand would not object to this course.

It was thought desirable that specific mention should be made of the Japanese islands to which the Treaty should apply.

Accordingly, on February 6, 1922, the Four Powers signed a Treaty, supplementary to the Treaty of December 13, 1921, providing—

"the term 'insular possessions and insular dominions' used in the aforesaid Treaty, shall, in its application to Japan, include only Karafuto (or the southern portion of the island of Sakhalin), Formosa and the Pescadores, and the islands under the mandate of Japan."

It was further provided that this agreement should have the same force and effect as the Treaty to which it was supplementary, and thus it is subject to the reservations made at the time the Treaty of December 13, 1921, was signed.

THE SHANTUNG CONTROVERSY

The most acute question, perhaps, in the Far East was that relating to Shantung, and it was also apparently the most difficult to settle satisfactorily.

At the outbreak of the European War, Japan, as the ally of Great Britain,

dispatched to Germany an ultimatum requiring the German Government to deliver over to the Japanese authorities, without condition or compensation, and with a view to its eventual restoration to China, the Kiaochow territory for which Germany had obtained from China a lease of 99 years by virtue of a Convention signed in 1898. Upon this ultimatum being disregarded by Germany, Japan landed forces in the Province of Shantung, which besieged and captured the City of Tsingtao and, in November, 1914, took possession of the whole leased territory of Kiaochow and of the German-owned Shantung Railway, running from that territory to the City of Tsinanfu, the capital of Shantung Province.

During the following year, as the result of the so-called "21 Demands" which Japan presented to China, there was signed on May 25, 1915, a Treaty by which the Chinese Government agreed "to give full assent to all matters upon which the Japanese Government may hereafter agree with the German Government relating to the disposition of all rights, interests, and concessions which Germany, by virtue of treaties or otherwise, possesses in relation to the Province of Shantung"; and it was further agreed that the whole of Kiaochow Bay should be opened as a commercial port, with a municipal concession to be established under the exclusive jurisdiction of Japan at a place to be designated by the Japanese Government, while an international concession might be established if the other foreign Powers should so desire.

By a further Exchange of Notes dated September 24, 1918, it was arranged that the Shantung Railway should be operated jointly by Japan and China, and that it should thereafter be protected not by Japanese troops but by a special police force composed of Chinese under Japanese direction.

This latter arrangement, however, was never ratified by China, which continued to protest against Japan's claim to have succeeded to the position of Germany with respect to the leased territory of Kiaochow, the Shantung Railway, and other matters in the Province of Shantung.

This question was raised at the Peace Conference at Paris, China insisting upon the restitution to itself of all rights and privileges which Germany had possessed in Tsingtao. The decision of the Conference was, however, adverse to this claim; and by Articles 156, 157, and 158 of the Treaty of Versailles, it was provided that Germany should renounce in favor of Japan all her rights, title, and privileges relative to the Province of Shantung, particularly those concerning the leased territory of Kiaochow and the movable and immovable property of the German Government therein, the Shantung Railway, the mines operated by German nationals, and the submarine cables to Chefoo and to Shanghai which were the property of the German state. The cession thus made by the Treaty was nevertheless qualified by a declaration made in behalf of the Japanese Delegation, to the effect that "the policy of Japan consists in handing back the Shantung Peninsula in full sovereignty to China, retaining only the economic privileges granted to Germany and the right to establish a settlement under the usual conditions

at Tsingtao." By reason of this dissatisfaction with the disposition of the Shantung question made by the Versailles Treaty, the Chinese Government not only withheld its signature of that Treaty, but declined to entertain any proposals made by the Japanese Government for the adjustment of the question upon what it deemed to be the vague and arbitrary basis of restoring to China the "political sovereignty" (which China contended had not been affected by Japan's taking over the German position), while retaining for Japan the economic privileges—including the only deep-water harbor in the Province, the only railway thence to the interior, the only coal and iron mines of the Province which have proved to be of value—so as to leave Japan in effective domination of the economic life of the Province of Shantung.

The question could not be brought, technically, before the Washington Conference, as all the nations represented at the Conference table, save the United States, China, and The Netherlands, were bound by the Treaty of Versailles. Japan could, of course, at once oppose any action by any of these Powers at the Conference which could be regarded as a departure from the terms of that Treaty.

It was quite clear, however, that the Conference furnished a most favorable opportunity for negotiations between China and Japan in which by mutual agreement a solution of the difficulty might be found. In order that the parties might be brought together, the good offices of Mr. Balfour and Mr. Hughes, individually, were tendered to both parties, with their consent, and conversations looking to a settlement were begun. These conversations continued for many weeks and had the happy result of complete agreement, which was embodied in a Treaty signed on the part of China and Japan on February 4, 1922. The main outlines of this Treaty are as follows:

"Japan will, within six months from the date of the Treaty, restore to China the former German leased territory of Kiaochow, and all public properties therein, without charge except for such additions and improvements as may have been made by Japan during the period of her occupation;

"All Japanese troops are to be withdrawn as soon as possible—from the line of the Railway within six months at the latest, and from the leased territory not later than 30 days from the date of its transfer to China;

"The customhouse at Tsingtao is at once to be made an integral part of the Chinese Maritime Customs;

"The Shantung (Tsingtao-Tsinanfu) Railway and appurtenant properties are to be transferred to China, the transfer to be completed within 9 months, at the latest, from the date of coming into force of the Treaty; the value of the property to be determined by a commission upon the basis of approximately 53,000,000 gold marks, already assessed against Japan by the Reparations Commission as the value of the railway property taken by Japan from Germany in 1914; the value fixed being paid by China to Japan by Chinese Government treasury notes, secured on the properties and revenues of the Railway, and running for a period of 15 years, but redeemable either in whole or in part at any time after 5 years from the date of payment; pending the complete redemption of such treasury notes, the Chinese Gov-

ernment to employ a Japanese subject as traffic manager, and a Japanese subject as one of two joint chief accountants, under the authority and control of the Chinese managing director of the railway;

"The rights in the construction of two extensions of the Shantung Railway, reserved in 1914 for German enterprise, and subsequently granted to a Japanese syndicate, are to be opened to the activities of an international financial group on terms to be arranged between China and that group;

"The coal and iron mines formerly owned by the German Shantung Railway Company are to be handed over to a company to be formed under a special charter of the Chinese Government, in which Japanese capital may participate equal with Chinese capital;

"Japan relinquishes its claim to the establishment of an exclusive Japanese settlement in the leased territory, and China opens the whole of that territory to foreign trade, undertaking to respect all valid vested rights therein;

"China is enabled to purchase, for incorporation in its Government salt monopoly, the salt fields now operated in the leased territory by Japanese subjects, on the understanding that it will allow the export on reasonable terms of salt to meet the shortage in Japan;

"Japan relinquishes to China all claims with respect to the Tsingtao-Chefoo and Shanghai cables, except such portions as were utilized by Japan during the war for the laying of the cable from Tsingtao to Sasebo;

"Japan is to transfer to China for fair compensation the wireless stations at Tsingtao and Tsinanfu;

"Japan renounces all preferential rights in respect of foreign assistance in persons, capital, and material stipulated in the Kiachow Convention of 1898 between China and Germany."

WEI-HAI-WEI

On the announcement to the Conference of the conclusion of the agreement relating to Shantung, Mr. Balfour, on behalf of the British Government, proposed to restore Wei-Hai-Wei to China. Mr. Balfour said:

"The circumstances under which Weihaiwei thus came under the control of Britain have now not only provisionally changed, but they have altogether disappeared. The rest of the Province of Shantung is now handed back under suitable conditions to the complete sovereignty of China. Under like suitable conditions I have to announce that Great Britain proposes to hand back Weihaiwei to the country within whose frontier it lies.

"It has so far been used merely as a sanatorium or summer resort for ships of war coming up from the tropical or more southern portions of the China station. I doubt not that arrangements can be made under which it will remain available for that innocent and healthful purpose in time to come. But Chinese sovereignty will now be restored, as it has been restored in other parts of the Province, and we shall be largely guided in the arrangements that we propose at once to initiate by the example so happily set us by the Japanese and Chinese negotiators in the case of Shantung. They have received from this great assembly unmistakable proof of your earnest approval, and most surely they deserve it."

PRINCIPLES AND POLICIES IN RELATION TO CHINA

The work of the Conference in connection with Far Eastern matters was largely devoted to the effort to give new vigor and reality to the coordinated principles of territorial and administrative integrity of China and of the "Open Door" or equality of opportunity for all nations in China. These principles have been called coordinate, but they are, in fact, different aspects of the same principle. For any impairment of the sovereignty of China must affect the rights and interests of other powers in relation to China; and any attempt to establish a particularistic and exclusive system in favor of any foreign nation thereby creates conditions prejudicial to China's freedom of action in relation to other Powers. The distinction between the two phases of this question would therefore seem to be one of relative emphasis rather than of kind.

As the foundation of its work in relation to China, the Conference adopted the following fundamental principles, in agreeing:

"(1) To respect the sovereignty, the independence, and the territorial and administrative integrity of China;

"(2) To provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government;

"(3) To use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China;

"(4) To refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly States and from countenancing action inimical to the security of such States."

Thus were reaffirmed the postulates of American policy which were no longer to be left to the exchanges of diplomatic notes, but were to receive the sanction of the most solemn undertaking of the Powers.

This statement was supplemented by the agreement that the Powers attending the Conference "would not enter into any treaty, agreement, arrangement or understanding, either with one another, or individually, or collectively, with any Power or Powers, which would infringe or impair these principles."

In the light of experience, it was deemed important that there should be a more definite statement of what was connoted by the "Open Door" or the principle of equal opportunity, and accordingly the Conference adopted the following resolutions:

"I. With a view to applying more effectually the principles of the Open Door or equality of opportunity in China for the trade and industry of all nations, the Powers other than China represented at this Conference agree—

"(a) Not to seek or to support their nationals in seeking any arrangement which might purport to establish in favor of their interests any general

superiority of rights with respect to commercial or economic development in any designated region of China;

"(b) Not to seek or to support their nationals in seeking any such monopoly or preference as would deprive other nationals of the right of undertaking any legitimate trade or industry in China or of participating with the Chinese Government or with any local authority in any category of public enterprise, or which by reason of its scope, duration or geographical extent is calculated to frustrate the practical application of the principle of equal opportunity.

"It is understood that this agreement is not to be so construed as to prohibit the acquisition of such properties or rights as may be necessary to the conduct of a particular commercial, industrial or financial undertaking or to the encouragement of invention and research.

"II. The Chinese Government takes note of the above agreement and declares its intention of being guided by the same principles in dealing with applications for economic rights and privileges from Governments and nationals of all foreign countries whether parties to that agreement or not."

There still remained the efforts of nationals, as distinguished from governments, in derogation of the Open Door principle, to create for themselves spheres of influence in China in order to enjoy mutually exclusive opportunities. This sort of endeavor the Powers agreed to restrain by resolving:

"*Resolved*, That the Signatory Powers will not support any agreements by their respective nationals with each other designed to create Spheres of Influence or to provide for the enjoyment of mutually exclusive opportunities in designated parts of Chinese territory."

It was also apparent, in connection with the particular subject of railways, that safeguards should be erected against practices of unjust discrimination, although there was no intent to intimate that any unfair discrimination lay at the door of China. Accordingly the Conference took action as follows:

"The Chinese Government declares that throughout the whole of the railways in China it will not exercise or permit any unfair discrimination of any kind. In particular, there shall be no discrimination whatever, direct or indirect, in respect of charges or of facilities on the ground of the nationality of passengers or the countries from which or to which they are proceeding, or the origin or ownership of goods or the country from which or to which they are consigned, or the nationality or ownership of the ship or other means of conveying such passengers or goods before or after their transport on the Chinese railways.

"The other Powers represented at this Conference take note of the above declaration and make a corresponding declaration in respect of any of the aforesaid railways over which they or their nationals are in a position to exercise any control in virtue of any concession, special agreement, or otherwise."

The agreements evidenced by these Resolutions, and constituting a Magna Charta for China, were embodied in the Treaty signed on February 6, 1922.

In this Treaty it was also provided that the Contracting Powers agreed fully to respect Chinese rights as a neutral in time of war to which China is

not a party, and China declared that when she was a neutral she would observe the obligations of neutrality.

Again, in order to aid the carrying out of these stipulations of the Treaty, provision was made for consultation among the Powers concerned with respect to their application. It was provided:

"The Contracting Powers agree that, whenever a situation arises which in the opinion of any one of them involves the application of the stipulations of the present Treaty, and renders desirable discussion of such application, there shall be full and frank communication between the Contracting Powers concerned."

This involves no impairment of national sovereignty, no sacrifice of national interests, no provision for agreements reached apart from the constitutional methods of the respective Powers, but a simple opportunity for consultation, examination, and expression of views whenever any question under the specified stipulations of the Treaty may arise.

It is believed that through this Treaty the Open Door in China has at last been made a fact.

BOARD OF REFERENCE

In order further to provide a procedure for dealing with questions which might arise under the provisions of the Treaty, relating to equality of opportunity and unfair discrimination in railroad service, a Resolution was adopted providing for the constitution of a Board of Reference, which would furnish a facility for investigation and report. The Resolution was adopted in the following terms:

"Desiring to provide a procedure for dealing with questions that may arise in connection with the execution of the provisions of Articles III and V of the Treaty to be signed at Washington on February 6th, 1922, with reference to their general policy designed to stabilize conditions in the Far East, to safeguard the rights and interests of China, and to promote intercourse between China and the other Powers upon the basis or equality of opportunity;

"Resolve that there shall be established in China a Board of Reference to which any questions arising in connection with the execution of the aforesaid Articles may be referred for investigation and report.

"The Special Conference provided for in Article II of the Treaty to be signed at Washington on February 6th, 1922, with reference to the Chinese Customs Tariff, shall formulate for the approval of the Powers concerned a detailed plan for the constitution of the Board."

It will be observed that this Board, which is intended merely as a board of inquiry, is not yet constituted, and the recommendations of the Special Conference, with respect to its constitution, must be submitted for the approval of the Powers, which, of course, must act according to their constitutional methods in the adoption of any agreement containing a detailed plan.

ALIENATION OF TERRITORY

In connection with the presentation by China of the principles asserted in behalf of her territorial and administrative integrity, China placed upon the record of the Conference the following declaration:

"China, upon her part, is prepared to give an undertaking not to alienate or lease any portion of her territory or littoral to any Power."

It was proper that to China should be given the opportunity to develop in the Conference those questions which more intimately affected her integrity and sovereignty, and her Delegation took occasion to indicate fully, and very ably, certain grounds of complaint which China had against various practices.

EXTRATERRITORIALITY

By treaties between Great Britain and China, dated September 5, 1902; between the United States and China, dated October 8, 1903; and between Japan and China dated October 8, 1903, these Powers agreed to give every assistance towards the attainment by the Chinese Government of its expressed desire to reform its judicial system and to bring it into accord with that of western nations and declared that they were also "prepared to relinquish extraterritorial rights when satisfied that the state of the Chinese laws, the arrangements for their administration, and other considerations, warrant" them in so doing. In the light of these agreements, and taking into consideration existing conditions in China, it was resolved by the Powers in the Conference as follows:

"That the Governments of the Powers above named shall establish a Commission (to which each of such Governments shall appoint one member) to inquire into the present practice of extraterritorial jurisdiction in China, and into the laws and the judicial system and the methods of judicial administration of China, with a view to reporting to the Governments of the several Powers above named their findings of fact in regard to these matters, and their recommendations as to such means as they may find suitable to improve the existing conditions of the administration of justice in China, and to assist and further the efforts of the Chinese Government to effect such legislation and judicial reforms as would warrant the several Powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality;

"That the Commission herein contemplated shall be constituted within three months after the adjournment of the Conference in accordance with detailed arrangements to be hereafter agreed upon by the Governments of the Powers above named, and shall be instructed to submit its report and recommendations within one year after the first meeting of the Commission.

"That each of the Powers above named shall be deemed free to accept or to reject all or any portion of the recommendations of the Commission herein contemplated, but that in no case shall any of the said Powers make its acceptance of all or any portion of such recommendations either directly or indirectly dependent on the granting by China of any special concession, favor, benefit or immunity, whether political or economic.

"ADDITIONAL RESOLUTION.

"That the non-signatory Powers, having by treaty extraterritorial rights in China, may accede to the resolution affecting extraterritoriality and the administration of justice in China by depositing within three months after the adjournment of the Conference a written notice of accession with the Government of the United States for communication by it to each of the signatory Powers.

"ADDITIONAL RESOLUTION

"That China, having taken note of the resolutions affecting the establishment of a Commission to investigate and report upon extraterritoriality and the administration of justice in China, expresses its satisfaction with the sympathetic disposition of the Powers hereinbefore named in regard to the aspiration of the Chinese Government to secure the abolition of extraterritoriality in China, and declares its intention to appoint a representative who shall have the right to sit as a member of the said Commission, it being understood that China shall be deemed free to accept or to reject any or all of the recommendations of the Commission. Furthermore, China is prepared to cooperate in the work of this Commission and to afford to it every possible facility for the successful accomplishment of its tasks."

FOREIGN POSTAL AGENCIES IN CHINA

The following Resolution was adopted by the Conference in relation to foreign postal agencies in China:

"A. Recognizing the justice of the desire expressed by the Chinese Government to secure the abolition of foreign postal agencies in China, save or except in leased territories or as otherwise specifically provided by treaty, it is resolved:

(1) The four Powers having such postal agencies agree to their abandonment subject to the following conditions:

(a) That an efficient Chinese postal service is maintained;

(b) That an assurance is given by the Chinese Government that they contemplate no change in the present postal administration so far as the status of the foreign Co-Director General is concerned.

(2) To enable China and the Powers concerned to make the necessary dispositions, this arrangement shall come into force and effect not later than January 1, 1923.

"B. Pending the complete withdrawal of foreign postal agencies, the four Powers concerned severally undertake to afford full facilities to the Chinese customs authorities to examine in those agencies all postal matters (excepting ordinary letters, whether registered or not, which upon external examination appear plainly to contain only written matter) passing through them, with a view to ascertaining whether they contain articles which are dutiable or contraband or which otherwise contravene the customs regulations or laws of China."

ARMED FORCES IN CHINA

The following Resolution was adopted in relation to foreign troops in China, including police and railroad guards:—

"Whereas The Powers have from time to time stationed armed forces, including police and railway guards, in China to protect the lives and property of foreigners lawfully in China;

"And whereas It appears that certain of these armed forces are maintained in China without the authority of any treaty or agreement;

"And whereas The Powers have declared their intention to withdraw their armed forces now on duty in China without the authority of any treaty or agreement, whenever China shall assure the protection of the lives and property of foreigners in China;

"And whereas China has declared her intention and capacity to assure the protection of the lives and property of foreigners in China:

"Now to the end that there may be clear understanding of the conditions upon which in each case the practical execution of those intentions must depend;

"It is resolved: That the Diplomatic Representatives in Peking of the Powers now in Conference at Washington, to wit, the United States of America, Belgium, the British Empire, France, Italy, Japan, The Netherlands, and Portugal, will be instructed by their respective Governments, whenever China shall so request, to associate themselves with three representatives of the Chinese Government to conduct collectively a full and impartial inquiry into the issues raised by the foregoing declarations of intention made by the Powers and by China and shall thereafter prepare a full and comprehensive report setting out without reservation their findings of fact and their opinion with regard to the matter hereby referred for inquiry, and shall furnish a copy of their report to each of the nine Governments concerned which shall severally make public the report with such comment as each may deem appropriate. The representatives of any of the Powers may make or join in minority reports stating their differences, if any, from the majority report.

"That each of the Powers above named shall be deemed free to accept or reject all or any of the findings of fact or opinions expressed in the report, but that in no case shall any of the said Powers make its acceptance of all or any of the findings of fact or opinions either directly or indirectly dependent on the granting by China of any special concession, favor, benefit, or immunity, whether political or economic."

RADIO STATIONS IN CHINA

The following action was taken with respect to radio stations:

"1. That all radio stations in China, whether maintained under the provisions of the international protocol of September 7, 1901, or in fact maintained in the grounds of any of the foreign legations in China, shall be limited in their use to sending and receiving government messages and shall not receive or send commercial or personal or unofficial messages, including press matter: Provided, however, that in case all other telegraphic communication is interrupted, then, upon official notification accompanied by proof of such interruption to the Chinese Ministry of Communications, such stations may afford temporary facilities for commercial, personal, or unofficial messages, including press matter, until the Chinese Government has given notice of the termination of the interruption;

"2. All radio stations operated within the territory of China by a foreign government or the citizens or subjects thereof under treaties or concessions of the Government of China, shall limit the messages sent and received by

the terms of the treaties or concessions under which the respective stations are maintained;

"3. In case there be any radio station maintained in the territory of China by a foreign government or citizens or subjects thereof without the authority of the Chinese Government, such station and all the plant, apparatus, and material thereof shall be transferred to and taken over by the Government of China, to be operated under the direction of the Chinese Ministry of Communications upon fair and full compensation to the owners for the value of the installation, as soon as the Chinese Ministry of Communications is prepared to operate the same effectively for the general public benefit;

"4. If any questions shall arise as to the radio stations in leased territories, in the South Manchurian Railway Zone or in the French Concession at Shanghai, they shall be regarded as matters for discussion between the Chinese Government and the Government concerned;

"5. The owners or managers of all radio stations maintained in the territory of China by foreign powers or citizens or subjects thereof shall confer with the Chinese Ministry of Communications for the purpose of seeking a common arrangement to avoid interference in the use of wave lengths by wireless stations in China, subject to such general arrangements as may be made by an international conference convened for the revision of the rules established by the International Radio Telegraph Convention, signed at London, July 5, 1912."

The following declaration in connection with this Resolution was made by the Powers other than China:

"The Powers other than China declare that nothing in paragraphs 3 or 4 of the Resolutions of 7th December, 1921, is to be deemed to be an expression of opinion by the Conference as to whether the stations referred to therein are or are not authorized by China.

"They further give notice that the result of any discussion arising under paragraph 4 must, if it is not to be subject to objection by them, conform with the principles of the Open Door or equality of opportunity approved by the Conference."

There was also a declaration by China, upon the same subject, as follows:

"The Chinese Delegation takes this occasion formally to declare that the Chinese Government does not recognize or concede the right of any foreign Power or of the nationals thereof to install or operate, without its express consent, radio stations in legation grounds, settlements, concessions, leased territories, railway areas, or other similar areas."

RAILWAYS IN CHINA

In addition to the resolutions already mentioned relating to unfair discrimination, a general resolution was adopted by the Conference in relation to railways in China:

"The Powers represented in this Conference record their hope that to the utmost degree consistent with legitimate existing rights, the future development of railways in China shall be so conducted as to enable the Chinese Government to effect the unification of railways into a railway sys-

tem under Chinese control, with such foreign financial and technical assistance as may prove necessary in the interests of that system."

And China placed the following declaration as to railways upon the records of the Conference:

"The Chinese Delegation notes with sympathetic appreciation the expression of the hope of the Powers that the existing and future railways of China may be unified under the control and operation of the Chinese Government with such foreign financial and technical assistance as may be needed. It is our intention as speedily as possible to bring about this result. It is our purpose to develop existing and future railways in accordance with a general programme that will meet the economic, industrial, and commercial requirements of China. It will be our policy to obtain such foreign financial and technical assistance as may be needed from the Powers in accordance with the principles of the Open Door or equal opportunity; and the friendly support of these Powers will be asked for the effort of the Chinese Government to bring all the railways of China, now existing or to be built, under its effective and unified control and operation."

CHINESE CUSTOMS TARIFF

Important action was taken with respect to the Chinese customs tariff, and the Resolutions adopted upon this subject by the Conference were embodied in a Treaty signed on February 6th. In presenting this Treaty to the Conference, Senator Underwood reviewed the history of Chinese customs, and stated the purpose and effect of the Treaty. In view of the intricacy of the matter, this statement is given in full, as follows:

"I realize fully that the Delegates seated at this table understand why the Nine Powers have agreed with China on the adoption of a customs tariff, but in this Twentieth Century treaties have ceased to be compacts of governments, and if they are to live and survive must be the understandings of the people themselves.

"It may seem an anomaly to the people of the world who have not studied this question that this Conference, after declaring that they recognize the sovereignty and territorial integrity of China, should engage with China in a compact about a domestic matter that is a part of her sovereignty, and to announce the treaty without an explanation may lead to misunderstanding, and therefore I ask the patience of the Conference for a few minutes that I may put in the record a statement of the historic facts that have led up to present conditions, that makes it necessary that this Conference should enter into this agreement.

"The conclusions which have been reached with respect to the Chinese maritime customs tariff are two in number, the first being in the form of an agreement for an immediate revision of existing schedules, so as to bring the rate of duty up to a basis of 5 per cent effective. The second is in the form of a treaty and provides for a special conference which shall be empowered to levy surtaxes and to make other arrangements for increasing the customs schedules above the rate of 5 per cent effective.

"In order to understand the nature and the reasons for these agreements, it is well to bear in mind the historical background of the present treaty adjustment, which places such a large control of the Chinese customs in the hands of foreign powers.

"The origin of the Chinese customs tariff dates back to the Fourteenth Century, but the administration system was of such a nature that constant friction arose with foreign merchants engaged in trade with that country, and culminated in an acute controversy relating to the smuggling of opium, sometimes known as the Opium War of 1839-1842.

"This controversy ended in 1842 with the Treaty of Nankin, between China and Great Britain. The Treaty of Nankin marked the beginning of Chinese relations on a recognized legal basis with the countries of the Western World, and is likewise the beginning of the history of China's present tariff system.

"By the Treaty of Nankin it was agreed that five ports should be opened for foreign trade, and that a fair and regular tariff of export and import customs and other dues should be published.

"In a subsequent treaty of October 8, 1843, a tariff schedule was adopted for both imports and exports, based on the general rate of 5 per cent ad valorem.

"In 1844 the first treaty between China and the United States was concluded. In this treaty the tariff upon which China had agreed with Great Britain was made an integral part of its provisions, and most-favored-nation treatment was secured for the United States in the following terms:

"Citizens of the United States resorting to China shall in no case be subject to other or higher duties than are or shall be required of the people of any other nation whatever, and if additional advantages or privileges of whatever description be conceded hereafter by China to any other nation, the United States and the citizens thereof shall be entitled thereupon to a complete, equal, and impartial participation in the same."

"In the same year a similar treaty between China and France was concluded, and in 1847 a like treaty was entered into with Sweden and Norway.

"After an interval of a little over a decade, friction again developed and a war ensued.

"In 1851, when negotiations were again resumed, silver had fallen in value, prices of foreign commodities had changed, and the former schedule of duties no longer represented the rate of 5 per cent ad valorem.

"In 1858 China concluded what was known as the Tientsin Treaty with the United States, Russia, Great Britain, and France.

"The British Treaty, which was the most comprehensive, being completed by agreement as to the tariff and rules of trade, was signed at Shanghai on November 8, 1858. By this agreement a schedule of duties was provided to take the place of the schedule previously in force. Most of the duties were specific, calculated on the basis of 5 per cent of the then prevailing values of articles.

"The tariff schedule thus adopted in 1858 underwent no revision except in reference to opium until 1902.

"The beginning of foreign administrative supervision of the Chinese maritime customs dates back to the time of the Taiping Rebellion, when, in September, 1853, the city of Shanghai was captured by the Taiping rebels. As a consequence the Chinese customs was closed and foreign merchants had no offices to collect customs duties.

"In order to meet the emergency, the foreign consuls collected the duties until June 29, 1854, when an agreement was entered into with the British, American, and French consuls for the establishment of a foreign board of inspectors. Under this agreement a board of foreign inspectors was appointed, and continued in office until 1858, when the tariff commission met

and agreed to rules of trade, of which Article X provided that a uniform customs system should be enforced at every port, and that a high officer should be appointed by the Chinese government to superintend the foreign trade, and that this officer might select any British subject whom he might see fit to aid him in the administration of the customs revenue, and in a number of other matters connected with commerce and navigation. In 1914, just as the Great War was breaking, there were 1,357 foreigners in the Chinese customs service, representing twenty nationalities among a total of 7,441 employees.

"It is appropriate to observe that the present administrative system has given very great satisfaction in the matter of its efficiency and its fairness to the interests of all concerned, and in that connection I desire to say that, when the consideration of this tariff treaty was before the Subcommittee that prepared it, there was a general and I may say universal sentiment about the table from the Delegates representing the Nine Powers, that on account of the disturbed conditions in China to-day, unsettled governmental conditions, it was desirous, if it met with the approval of China, that there should be no disturbance at this time of the present administration of the customs system, and in response to that sentiment, which was discussed at the table, Dr. Koo, speaking for the Chinese Government, made a statement which I have been directed by the full committee to report to this Plenary Session, which is as follows:

"The Chinese Delegation has the honor to inform the Committee on the Far Eastern Questions of the Conference on the Limitation of Armament that the Chinese Government have no intention to effect any change which may disturb the present administration of the Chinese Maritime Customs."

"Speaking only for myself, desiring that in the not distant future China may have the opportunity when she has a parliamentary government established in China, representing her people, to exercise in every respect her full sovereignty, I hope the day may come in the not far distant future when China will regulate her own customs tariffs.

"But for the present, on account of the disturbed conditions in China, it is manifest that there must be an agreement and understanding between China and the other nations involved in her trade, and I want to say that this agreement as it is presented to the Conference as of to-day, meets the approbation and the approval of the representatives of the Chinese Government.

"Between the period of 1869 and 1901 a series of agreements were entered into which established special tariff privileges with various powers respecting movements of trade. This period culminated in a greatly involved state of affairs which led to the Boxer Revolution, out of which grew the doctrine of the Open Door.

"In 1902, in accordance with the terms of the Boxer protocol, a commission met at Shanghai to revise the traffic schedule. This revision applied only to the import duties and to the free list. Most of the duties were specific in character, and the remainder were at five per cent ad valorem. Nonenumerated goods were to pay 5 per cent ad valorem. All the duties remained subject to the restrictions of the earlier treaties, and those of the export duties which are still in force, are the specific duties contained in the schedule of 1858.

"In 1902, a treaty was concluded between China and Great Britain which laid a basis for the subsequent treaties between China and the United States

and China and Japan in 1903, along similar lines. In the preamble of the British treaty, the Chinese Government undertakes to discard completely the system of levying likin and other dues on goods at the place of production, in transit and at destination.

"The British Government in turn consents to allow a surtax on foreign goods imported by British subjects, the amount of this surtax on imports not to exceed the equivalent of one and one-half times the existing import duty. The levy of this additional surtax being contingent upon the abolition of the likin has never gone into effect, but remains, nevertheless, the broad basis upon which the general schedules of Chinese tariff duties may be increased.

"It is clear from the foregoing brief summary that two measures were necessary in dealing with the Chinese customs, the first being that of the revising of the tariff schedules as they exist, so as to make them conform to the rate of five per cent effective, as provided by the treaty.

"Second, to pave the way for the abolition of the likin, which constitutes the basis of higher rates. In the meantime, however, it is recognized that the Chinese Government requires additional revenue, and in order that this may be supplied, a special conference is charged with the levying of a surtax of two and one-half per cent on ordinary duties, and surtax of five per cent on the luxuries, in addition to the established rate of five per cent effective.

"In 1896, an agreement was made between Russia and China for the construction of the Chinese Eastern Railway, and as a part of this agreement, merchandise entering China from Russia was allowed to pass the border at one-third less than the conventional customs duties. Afterwards, similar reductions were granted to France, Japan, and Great Britain, where the merchandise entered China across her land borders and not by sea.

"This discrimination was unfair to the other nations, and not the least important paragraph in the proposed treaty is the one that abolishes this discrimination entirely.

"I will not read the formal parts of the treaty, and merely read the articles that are substantive.

"The first article reads:

"ARTICLE I

"The representatives of the Contracting Powers having adopted, on the fourth day of February, 1922, in the City of Washington, a Resolution, which is appended as an Annex to this Article, with respect to the revision of Chinese Customs duties, for the purpose of making such duties equivalent to an effective 5 per centum ad valorem, in accordance with existing treaties concluded by China with other nations, the Contracting Powers hereby confirm the said Resolution and undertake to accept the tariff rates fixed as a result of such revision. The said tariff rates shall become effective as soon as possible, but not earlier than two months after publication thereof.

"Then follows an Annex. It was intended originally for a separate resolution by the Conference to make the present rate effective. As I have stated, the rates of Chinese customs tariff were five per cent ad valorem, but they have been worked into specific rates, and China was not receiving under the old customs system the amount of revenue that she was entitled to under her treaty. But it was found when it was proposed to pass this merely as a resolution, that as these rates had been fixed in some of the

treaties and specifically named, it was necessary to include the resolution in the treaty so that it would abolish the binding power of the treaties that had already been made and substitute this new provision in their stead.

"The Annex reads as follows:

"ANNEX

"With a view to providing additional revenue to meet the needs of the Chinese Government, the Powers represented at this Conference, namely, the United States of America, Belgium, the British Empire, China, France, Italy, Japan, The Netherlands, and Portugal agree:

"That the customs schedule of duties on imports into China adopted by the Tariff Revision Commission at Shanghai on December 19, 1918, shall forthwith be revised so that the rates of duty shall be equivalent to 5 per cent effective, as provided for in the several commercial treaties to which China is a party.

"A Revision Commission shall meet at Shanghai, at the earliest practicable date, to effect this revision forthwith and on the general lines of the last revision.

"This Commission shall be composed of representatives of the Powers above named and of representatives of any additional Powers having Governments at present recognized by the Powers represented at this Conference and who have treaties with China providing for a tariff on imports and exports not to exceed 5 per cent ad valorem and who desire to participate therein.

"The revision shall proceed as rapidly as possible with a view to its completion within four months from the date of the adoption of this Resolution by the Conference on the Limitation of Armament and Pacific and Far Eastern questions.

"The revised tariff shall become effective as soon as possible, but not earlier than two months after its publication by the Revision Commission.

"The Government of the United States, as convener of the present Conference, is requested forthwith to communicate the terms of this Resolution to the Government of Powers not represented at this Conference, but who participated in the Revision of 1918, aforesaid."

"Then the actual treaty provisions are incorporated, beginning with Article II.

"ARTICLE II

"Immediate steps shall be taken, through a Special Conference, to prepare the way for the speedy abolition of likin and for the fulfillment of the other conditions laid down in Article VIII of the Treaty of September 5th, 1902, between Great Britain and China, in Articles IV and V of the Treaty of October 8, 1903, between the United States and China, and in Article I of the Supplementary Treaty of October 8, 1903, between Japan and China, with a view to levying the surtaxes provided for in those articles.

"The Special Conference shall be composed of representatives of the Signatory Powers, and of such other Powers as may desire to participate, and may adhere to the present Treaty, in accordance with the provisions of Article VIII, in sufficient time to allow their representatives to take part. It shall meet in China within three months after the coming into force of the present Treaty, on a day and at a place to be designated by the Chinese Government.

"ARTICLE III

"The Special Conference provided for in Article II shall consider the interim provisions to be applied prior to the abolition of *likin* and the fulfillment of the other conditions laid down in the articles of the treaties mentioned in Article II; and it shall authorize the levying of a surtax on dutiable imports as from such date, for such purposes, and subject to such conditions as it may determine.

"The surtax shall be at a uniform rate of $2\frac{1}{2}$ per centum *ad valorem*, provided, that in case of certain articles of luxury which, in the opinion of the Special Conference, can bear a greater increase without unduly impeding trade, the total surtax may be increased but may not exceed 5 per centum *ad valorem*.

"ARTICLE IV

"Following the immediate revision of the customs schedule of duties on imports into China, mentioned in Article I, there shall be a further revision thereof to take effect at the expiration of four years following the completion of the aforesaid immediate revision, in order to ensure that the customs duties shall correspond to the *ad valorem* rates fixed by the Special Conference provided for in Article II.

"Following this further revision there shall be, for the same purpose, periodical revisions of the customs schedule of duties on imports into China every seven years, in lieu of the decennial revision authorized by existing treaties with China.

"In order to prevent delay, any revision made in pursuance of this article shall be effected in accordance with rules to be prescribed by the Special Conference provided for in Article II.

"ARTICLE V

"In all matters relating to customs duties there shall be effective equality of treatment and of opportunity for all the Contracting Powers.

"ARTICLE VI

"The principle of uniformity in the rates of customs duties levied at all the land and maritime frontiers of China is hereby recognized. The Special Conference provided for in Article II shall make arrangements to give practical effect to this principle; and it is authorized to make equitable adjustments in those cases in which a customs privilege to be abolished was granted in return for some local economic advantage.

"In the meantime, any increase in the rates of customs duties resulting from tariff revision, or any surtax hereafter imposed in pursuance of the present Treaty, shall be levied at a uniform rate *ad valorem* at all land and maritime frontiers of China.

"ARTICLE VII

"The charge for transit passes shall be at the rate of $2\frac{1}{2}$ per centum *ad valorem* until the arrangements provided for by Article II come into force.

"ARTICLE VIII

"Powers not signatory to the present Treaty whose Governments are at present recognized by the Signatory Powers, and whose present treaties with China provide for a tariff on imports and exports not to exceed 5 per centum, *ad valorem*, shall be invited to adhere to the present Treaty.

"The Government of the United States undertakes to make the necessary communications for this purpose and to inform the Governments of the Contracting Powers of the replies received. Adherence by any Power shall become effective on receipt of notice thereof by the Government of the United States.

"ARTICLE IX

"The provisions of the present Treaty shall override all stipulations of treaties between China and the respective Contracting Powers which are inconsistent therewith, other than stipulations according most-favored nation treatment."

* * *

"In conclusion, I can say that the adoption of this treaty and putting it into effect will in all probability double the existing revenues of China received from maritime and inland customs. I say in all human probability because the amount of revenue of course is governed by the amount of imports and exports coming into a country and going out of a country, and of course no one can predict with absolute certainty."

REDUCTION OF CHINESE MILITARY FORCES

In connection with the discussion of the Chinese revenue, and of the disturbed political conditions in China, the following resolution was adopted expressing the hope that the military forces of China might speedily be reduced:

"Whereas the Powers attending this Conference have been deeply impressed with the severe drain on the public revenue of China through the maintenance in various parts of the country, of military forces, excessive in number and controlled by the military chiefs of the provinces without coordination;

"And whereas the continued maintenance of these forces appears to be mainly responsible for China's present unsettled political conditions;

"And whereas it is felt that large and prompt reductions of these forces will not only advance the cause of China's political unity and economic development but will hasten her financial rehabilitation;

"Therefore, without any intention to interfere in the internal problems of China, but animated by the sincere desire to see China develop and maintain for herself an effective and stable government alike in her own interest and in the general interest of trade;

"And being inspired by the spirit of this Conference whose aim is to reduce, through the limitation of armament, the enormous disbursements which manifestly constitute the greater part of the encumbrance upon enterprise and national prosperity:

"It is resolved: That this Conference express to China the earnest hope that immediate and effective steps may be taken by the Chinese Government to reduce the aforesaid military forces and expenditures."

EXISTING COMMITMENTS

In order to insure complete information as to all commitments relating to China and also to provide in the future for suitable publicity, in regard to

agreements that may hereafter be made by or with respect to China, the following resolutions were adopted:

"The Powers represented in this Conference, considering it desirable that there should hereafter be full publicity with respect to all matters affecting the political and other international obligations of China and of the several Powers in relation to China, are agreed as follows:

"1. The several Powers other than China will at their earliest convenience file with the Secretariat General of the Conference for transmission to the participating Powers, a list of all treaties, conventions, exchange of notes, or other international agreements which they may have with China, or with any other Power or Powers in relation to China, which they deem to be still in force and upon which they may desire to rely. In each case, citations will be given to any official or other publication in which an authoritative text of the documents may be found. In any case in which the document may not have been published, a copy of the text (in its original language or languages) will be filed with the Secretariat General of the Conference.

"Every Treaty or other international agreement of the character described which may be concluded hereafter shall be notified by the Governments concerned within sixty (60) days of its conclusion to the Powers who are signatories of or adherents to this agreement.

"II. The several Powers other than China will file with the Secretariat General of the Conference at their earliest convenience, for transmission to the participating Powers, a list, as nearly complete as may be possible, of all those contracts between their nationals, of the one part, and the Chinese Government or any of its administrative subdivisions or local authorities, of the other part, which involve any concession, franchise, option, or preference with respect to railway construction, mining, forestry, navigation, river conservancy, harbor works, reclamation, electrical communications, or other public works or public services, or for the sale of arms or ammunition, or which involve a lien upon any of the public revenues or properties of the Chinese Government or of any of its administrative subdivisions. There shall be, in the case of each document so listed, either a citation to a published text, or a copy of the text itself.

"Every contract of the public character described which may be concluded hereafter shall be notified by the Governments concerned within sixty (60) days after the receipt of information of its conclusion to the Powers who are signatories of or adherents to this agreement.

"III. The Chinese Government agrees to notify in the conditions laid down in this agreement every treaty agreement or contract of the character indicated herein which has been or may hereafter be concluded by that Government or by any local authority in China with any foreign Power or the nationals of any foreign Power whether party to this agreement or not, so far as the information is in its possession.

"IV. The Governments of Powers having treaty relations with China, which are not represented at the present Conference, shall be invited to adhere to this agreement."

It will be observed that the only object and requirement of these resolutions is appropriate publicity.

THE TWENTY-ONE DEMANDS

The Chinese Delegation presented for the consideration of the Conference the questions arising upon what are called the "Twenty-One Demands," including the Sino-Japanese Treaties and Notes of 1915. The position of the Japanese Government, the Chinese Government, and the American Government was set forth in statements on behalf of each, which were placed upon the records of the Conference.

The statement made by Baron Shidehara on behalf of the Japanese Delegation was as follows:

"At a previous session of this Committee, the Chinese Delegation presented a statement urging that the Sino-Japanese Treaties and Notes of 1915 be reconsidered and cancelled. The Japanese Delegation, while appreciating the difficult position of the Chinese Delegation, does not feel at liberty to concur in the procedure now resorted to by China with a view to cancellation of international engagements which she entered into as a free sovereign nation.

"It is presumed that the Chinese Delegation has no intention of calling in question the legal validity of the compacts of 1915, which were formally signed and sealed by the duly authorized representatives of the two Governments, and for which the exchange of ratifications was effected in conformity with established international usages. The insistence by China on the cancellation of those instruments would in itself indicate that she shares the view that the compacts actually remain in force and will continue to be effective, unless and until they are cancelled.

"It is evident that no nation can have given ready consent to cessions of its territorial or other rights of importance. If it should once be recognized that rights solemnly granted by treaty may be revoked at any time on the ground that they were conceded against the spontaneous will of the grantor, an exceedingly dangerous precedent will be established, with far-reaching consequences upon the stability of the existing international relations in Asia, in Europe, and everywhere.

"The statement of the Chinese Delegation under review declares that China accepted the Japanese demands in 1915, hoping that a day would come when she should have the opportunity of bringing them up for reconsideration and cancellation. It is, however, difficult to understand the meaning of this assertion. It can not be the intention of the Chinese Delegation to intimate that China may conclude a treaty with any thought in mind of breaking it at the first opportunity.

"The Chinese Delegation maintains that the Treaties and Notes in question are derogatory to the principles adopted by the Conference with regard to China's sovereignty and independence. It has, however, been held by the Conference on more than one occasion that concessions made by China *ex contractu*, in the exercise of her own sovereign rights, can not be regarded as inconsistent with her sovereignty and independence.

"It should also be pointed out that the term 'Twenty-one Demands,' often used to denote the Treaties and Notes of 1915, is inaccurate and grossly misleading. It may give rise to an erroneous impression that the whole original proposals of Japan had been pressed by Japan and accepted *in toto* by China. As a matter of fact, not only 'Group V' but also several other matters contained in Japan's first proposals were eliminated entirely or

modified considerably, in deference to the wishes of the Chinese Government, when the final formula was presented to China for acceptance. Official records published by the two Governments relating to those negotiations will further show that the most important terms of the Treaties and Notes, as signed, had already been virtually agreed to by the Chinese negotiators before the delivery of the ultimatum, which then seemed to the Japanese Government the only way of bringing the protracted negotiations to a speedy close.

"The Japanese Delegation can not bring itself to the conclusion that any useful purpose will be served by research and re-examination at this Conference of old grievances which one of the nations represented here may have against another. It will be more in line with the high aim of the Conference to look forward to the future with hope and confidence.

"Having in view, however, the changes which have taken place in the situation since the conclusion of the Sino-Japanese Treaties and Notes of 1915, the Japanese Delegation is happy to avail itself of the present occasion to make the following declaration:

"1. Japan is ready to throw open to the joint activity of the International Financial Consortium recently organized the right of option granted exclusively in favor of Japanese capital, with regard, first, to loans for the construction of railways in South Manchuria and Eastern Inner Mongolia, and, second, to loans to be secured on taxes in that region; it being understood that nothing in the present declaration shall be held to imply any modification or annulment of the understanding recorded in the officially announced notes and memoranda which were exchanged among the Governments of the countries represented in the Consortium and also among the national financial groups composing the Consortium, in relation to the scope of the joint activity of that organization.

"2. Japan has no intention of insisting on her preferential right under the Sino-Japanese arrangements in question concerning the engagement by China of Japanese advisers or instructors on political, financial, military or police matters in South Manchuria.

"3. Japan is further ready to withdraw the reservation which she made, in proceeding to the signature of the Sino-Japanese Treaties and Notes of 1915, to the effect that Group V of the original proposals of the Japanese Government would be postponed for future negotiations.

"It would be needless to add that all matters relating to Shantung contained in those Treaties and Notes have now been definitely adjusted and disposed of.

"In coming to this decision, which I have had the honor to announce, Japan has been guided by a spirit of fairness and moderation, having always in view China's sovereign rights and the principle of equal opportunity."

In response Chief Justice Wang made the following statement for the Chinese Government:

"The Chinese Delegation has taken note of the statement of Baron Shidehara made at yesterday's session of the Committee with reference to the Sino-Japanese Treaties and Notes of May 25, 1915.

"The Chinese Delegation learns with satisfaction that Japan is now ready to throw open to the joint activity of the banking interests of other Powers the right of option granted exclusively in favor of Japanese capital with regard, first, to loans for the construction of railways in South Manchuria

and Eastern Inner Mongolia, and, second, to loans secured on taxes in that region; and that Japan has no intention of insisting upon a preferential right concerning the engagement by China of Japanese advisors or instructors on political, financial, military, or police matters in South Manchuria; also that Japan now withdraws the reservation which she made to the effect that Group V of her original demands upon China should be postponed for future negotiation.

"The Chinese Delegation greatly regrets that the Government of Japan should not have been led to renounce the other claims predicated upon the Treaties and Notes of 1915.

"The Japanese Delegation expressed the opinion that abrogation of these agreements would constitute 'an exceedingly dangerous precedent,' 'with far-reaching consequences upon the stability of the existing international relations in Asia, in Europe, and everywhere.'

"The Chinese Delegation has the honor to say that a still more dangerous precedent will be established with consequences upon the stability of international relations which can not be estimated, if, without rebuke or protest from other Powers, one nation can obtain from a friendly, but in a military sense, weaker neighbor, and under circumstances such as attended the negotiation and signing of the Treaties of 1915, valuable concessions which were not in satisfaction of pending controversies and for which no *quid pro quo* was offered. These treaties and notes stand out, indeed, unique in the annals of international relations. History records scarcely another instance in which demands of such a serious character as those which Japan presented to China in 1915, have, without even pretense of provocation, been suddenly presented by one nation to another nation with which it was at the time in friendly relations.

"No apprehension need be entertained that the abrogation of the agreements of 1915 will serve as a precedent for the annulment of other agreements, since it is confidently hoped that the future will furnish no such similar occurrences.

"So exceptional were the conditions under which the agreements of 1915 were negotiated, the Government of the United States felt justified in referring to them in the identic note of May 13, 1915, which it sent to the Chinese and Japanese Governments. That note began with the statement that 'in view of the circumstances which have taken place and which are now pending between the Government of China and the Government of Japan and of the agreements which have been reached as the result thereof, the Government of the United States has the honor to notify the Government of the Chinese Republic (Japan) that it can not recognize any agreement or undertaking which has been entered into between the Governments of China and Japan impairing the treaty rights of the United States and its citizens in China, the political or territorial integrity of the Republic of China, or the international policy relative to China commonly known as the Open Door Policy.'

"Conscious of her obligations to the other Powers, the Chinese Government, immediately after signing the agreements, published a formal statement protesting against the agreements which she had been compelled to sign, and disclaiming responsibility for consequent violations of treaty rights of the other Powers. In the statement thus issued, the Chinese Government declared that although they were 'constrained to comply in full with the terms of the (Japanese) ultimatum' they nevertheless 'disclaim any desire to associate themselves with any revision which may be thus effected,

of the various conventions and agreements concluded between the other Powers in respect of the maintenance of China's territorial independence and integrity, the preservation of the *status quo*, and the principle of equal opportunity for the commerce and industry of all nations in China.'

"Because of the essential injustice of these provisions, the Chinese Delegation, acting in behalf of the Chinese Government and of the Chinese people, has felt itself in duty bound to present to this Conference, representing the Powers with substantial interests in the Far East, the question as to the equity and justice of these agreements and therefore as to their fundamental validity.

"If Japan is disposed to rely solely upon a claim as to the technical or juristic validity of the agreements of 1915, as having been actually signed in due form by the two Governments, it may be said that so far as this Conference is concerned, the contention is largely irrelevant, for this gathering of the representatives of the nine Powers has not had for its purpose the maintenance of the legal *status quo*. Upon the contrary, the purpose has been, if possible, to bring about such changes in existing conditions upon the Pacific and in the Far East as might be expected to promote that enduring friendship among the nations of which the President of the United States spoke in his letter of invitation to the Powers to participate in this Conference.

"For the following reasons, therefore, the Chinese Delegation is of the opinion that the Sino-Japanese Treaties and Exchange of Notes of May 25, 1915, should form the subject of impartial examination with a view to their abrogation:

"1. In exchange for the concessions demanded of China, Japan offered no *quid pro quo*. The benefits derived from the agreements were wholly unilateral.

"2. The agreements, in important respects, are in violation of treaties between China and the other powers.

"3. The agreements are inconsistent with the principles relating to China which have been adopted by the Conference.

"4. The agreements have engendered constant misunderstandings between China and Japan, and, if not abrogated, will necessarily tend, in the future, to disturb friendly relations between the two countries, and will thus constitute an obstacle in the way of realizing the purpose for the attainment of which this Conference was convened. As to this, the Chinese Delegation, by way of conclusion, can, perhaps, do no better than quote from a Resolution introduced in the Japanese Parliament, in June, 1915, by Mr. Hara, later Premier of Japan, a Resolution which received the support of some one hundred and thirty of the members of the Parliament.

"The Resolution reads:

"*Resolved*, that the negotiations carried on with China by the present Government have been inappropriate in every respect; that they are detrimental to the amicable relationship between the two countries, and provocative of suspicions on the part of the Powers; that they have the effect of lowering the prestige of the Japanese Empire; and that, while far from capable of establishing the foundation of peace in the Far East, they will form the source of future trouble.'

"The foregoing declaration has been made in order that the Chinese Government may have upon record the view which it takes, and will continue to take, regarding the Sino-Japanese Treaties and Exchanges of Notes of May 25, 1915."

The attitude and policy of the American Government was thus stated by the Secretary of State of the United States:

"The important statement made by Baron Shidehara on behalf of the Japanese Government makes it appropriate that I should refer to the position of the Government of the United States as it was set forth in identical notes addressed by that Government to the Chinese Government and to the Japanese Government on May 13, 1915.

"The note to the Chinese Government was as follows:

"In view of the circumstances of the negotiations which have taken place and which are now pending between the Government of China and the Government of Japan and of the agreements which have been reached as a result thereof, the Government of the United States has the honor to notify the Government of the Chinese Republic that it can not recognize any agreement or undertaking which has been entered into or which may be entered into between the Governments of China and Japan impairing the Treaty rights of the United States and its citizens in China, the political or territorial integrity of the Republic of China, or the international policy relative to China commonly known as the Open Door Policy.

"An identical note has been transmitted to the Imperial Japanese Government."

"That statement was in accord with the historic policy of the United States in its relation to China, and its position as thus stated has been, and still is, consistently maintained.

"It has been gratifying to learn that the matters concerning Shantung, which formed the substance of Group I of the original demands, and were the subject of the Treaty and exchange of notes with respect to the province of Shantung, have been settled to the mutual satisfaction of the two parties by negotiations conducted collaterally with this Conference, as reported to the Plenary Session on February 1st.

"It is also gratifying to be advised by the statement made by Baron Shidehara on behalf of the Japanese Government that Japan is now ready to withdraw the reservation which she made, in proceeding to the signature of the treaties and notes of 1915, to the effect that Group V of the original proposals of the Japanese Government—namely, those concerning the employment of influential Japanese as political, financial and military advisers; land for schools and hospitals; certain railways in South China; the supply of arms, and the right of preaching—would be postponed for future negotiations. This definite withdrawal of the outstanding questions under Group V removes what has been an occasion for considerable apprehension on the part alike of China and of foreign nations which felt that the renewal of these demands could not but prejudice the principles of the Integrity of China and of the Open Door.

"With respect to the Treaty and the notes concerning South Manchuria and Eastern Inner Mongolia, Baron Shidehara has made the reassuring statement that Japan has no intention of insisting on a preferential right concerning the engagement by China of Japanese advisers or instructors on political, financial, military or police matters in South Manchuria.

"Baron Shidehara has likewise indicated the readiness of Japan not to insist upon the right of option granted exclusively in favor of Japanese capital with regard, first, to loans for the construction of railways in South Manchuria and Eastern Inner Mongolia; and, second, with regard to loans secured on the taxes of these regions; but that Japan will throw them open to

the joint activity of the international financial Consortium recently organized.

"As to this, I may say that it is doubtless the fact that any enterprise of the character contemplated, which may be undertaken in these regions by foreign capital, would in all probability be undertaken by the Consortium. But it should be observed that existing treaties would leave the opportunity for such enterprises open on terms of equality to the citizens of all nations. It can scarcely be assumed that this general right of the Treaty Powers of China can be effectively restricted to the nationals of those countries which are participants in the work of the Consortium, or that any of the Governments which have taken part in the organization of the Consortium would feel themselves to be in a position to deny all rights in the matter to any save the members of their respective national groups in that organization. I, therefore, trust that it is in this sense that we may properly interpret the Japanese Government's declaration of willingness to relinquish its claim under the 1915 treaties to any exclusive position with respect to railway construction and to financial operations secured upon local revenues, in South Manchuria and Eastern Inner Mongolia.

"It is further to be pointed out that by Article II, III, and IV of the Treaty of May 25, 1915, with respect to South Manchuria and Eastern Inner Mongolia, the Chinese Government granted to Japanese subjects the right to lease land for building purposes, for trade and manufacture, and for agricultural purposes in South Manchuria, to reside and travel in South Manchuria, and to engage in any kind of business and manufacture there, and to enter into joint undertakings with Chinese citizens in agriculture and similar industries in Eastern Inner Mongolia.

"With respect to this grant, the Government of the United States will, of course, regard it as not intended to be exclusive, and, as in the past, will claim from the Chinese Government for American citizens the benefits accruing to them by virtue of the most favored nation clauses in the treaties between the United States and China.

"I may pause here to remark that the question of the validity of treaties as between Japan and China is distinct from the question of the treaty rights of the United States under its treaties with China; these rights have been emphasized and consistently asserted by the United States.

"In this, as in all matters similarly affecting the general right of its citizens to engage in commercial and industrial enterprises in China, it has been the traditional policy of the American Government to insist upon the doctrine of equality for the nationals of all countries, and this policy, together with the other policies mentioned in the note of May 13, 1915, which I have quoted, are consistently maintained by this government. I may say that it is with especial pleasure that the Government of the United States finds itself now engaged in the act of reaffirming and defining, and I hope that I may add, revitalizing, by the proposed Nine-Power Treaty, these policies with respect to China."

This review of the action of the Conference in relation to China can not properly be closed without referring to the important declaration made by Baron Shidehara on behalf of the Japanese Delegation at the close of the Conference. In this declaration Baron Shidehara made clear what is meant by Japan in referring to her "special interests" in China. As thus defined these special interests are not claimed to connote either political domination

or exclusive privileges, or any "claim or pretension" prejudicial to China or to any other foreign nation, or any antagonism to the principle of the open door and equal opportunity. Baron Shidehara said:

"We are vitally interested in a speedy establishment of peace and unity in China and in the economic development of her vast natural resources. It is, indeed, to the Asiatic mainland that we must look primarily for raw materials and for the markets where our manufactured articles may be sold. Neither raw materials nor the markets can be had unless order, happiness, and prosperity reign in China, under good and stable government. With hundreds of thousands of our nationals resident in China, with enormous amounts of our capital invested there, and with our own national existence largely dependent on that of our neighbor, we are naturally interested in that country to a greater extent than any of the countries remotely situated.

"To say that Japan has special interests in China is simply to state a plain and actual fact. It intimates no claim or pretension of any kind prejudicial to China or to any other foreign nation.

"Nor are we actuated by any intention of securing preferential or exclusive economic rights in China. Why should we need them? Why should we be afraid of foreign competition in the Chinese market provided it is conducted squarely and honestly? Favored by geographical position, and having fair knowledge of the actual requirements of the Chinese people, our traders and business men can well take care of themselves in their commercial, industrial, and financial activities in China, without any preference or exclusive rights.

"We do not seek any territory in China, but we do seek a field of economic activity beneficial as much to China as to Japan, based always on the principle of the open door and equal opportunity."

SIBERIA

Questions directly affecting Russian (or Siberian) interests were only two, viz, the question of the continued presence of Japanese troops in certain Russian territory, and that relating to the affairs of the Chinese Eastern Railway.

With respect to the first, statements were made by Japan and the United States and spread upon the minutes of the Conference. M. Sarraut, on behalf of France, also made a statement supporting in general terms the position of the United States and expressing confidence that Japan would fulfill its promises eventually to withdraw its forces from Russian territory, and in general to respect the integrity of Russia.

The statement by Baron Shidehara on behalf of Japan was as follows:

"The Military expedition of Japan to Siberia was originally undertaken in common accord and in cooperation with the United States in 1918. It was primarily intended to render assistance to the Czecho-Slovak troops who in their homeward journey across Siberia from European Russia, found themselves in grave and pressing danger at the hands of hostile forces under German command. The Japanese and American expeditionary forces together with other allied troops fought their way from Vladivostok far into the region of the Amur and the Trans-Baikal Provinces to protect the rail-

way lines which afforded the sole means of transportation of the Czecho-Slovak troops from the interior of Siberia to the port of Vladivostok. Difficulties which the Allied forces had to encounter in their operations in the severe cold winter of Siberia were immense.

"In January, 1920, the United States decided to terminate its military undertaking in Siberia, and ordered the withdrawal of its forces. For some time thereafter Japanese troops continued alone to carry out the duty of guarding several points along the Trans-Siberian Railways in fulfillment of Inter-Allied arrangements and of affording facilities to the returning Czecho-Slovaks.

"The last column of Czecho-Slovak troops safely embarked from Vladivostok in September, 1920. Ever since then Japan has been looking forward to an early moment for the withdrawal of her troops from Siberia. The maintenance of such troops in a foreign land is for her a costly and thankless undertaking, and she will be only too happy to be relieved of such responsibility. In fact, the evacuation of the Trans-Baikal and the Amur Provinces was already completed in 1920. The only region which now remains to be evacuated is a southern portion of the Maritime Province around Vladivostok and Nikolsk.

"It will be appreciated that for Japan the question of the withdrawal of troops from Siberia is not quite as simple as it was for other Allied Powers. In the first place, there is a considerable number of Japanese residents who had lawfully and under guarantees of treaty established themselves in Siberia long before the Bolshevik eruption, and were there entirely welcomed. In 1917, prior to the Joint American-Japanese military enterprise, the number of such residents was already no less than 9,717. In the actual situation prevailing there, those Japanese residents can hardly be expected to look for the protection of their lives and property to any other authorities than Japanese troops. Whatever districts those troops have evacuated in the past have fallen into disorder, and practically all Japanese residents have had precipitately to withdraw, to seek for their personal safety. In so withdrawing, they have been obliged to leave behind large portions of their property, abandoned and unprotected, and their homes and places of business have been destroyed. While the hardships and losses thus caused the Japanese in the Trans-Baikal and the Amur provinces have been serious enough, more extensive damages are likely to follow from the evacuation of Vladivostok in which a larger number of Japanese have always been resident and a greater amount of Japanese capital invested.

"There is another difficulty by which Japan is faced in proceeding to the recall of her troops from the Maritime Province. Due to geographical propinquity, the general situation in the districts around Vladivostok and Nikolsk is bound to affect the security of Korean frontier. In particular, it is known that these districts have long been the base of Korean conspiracies against Japan. Those hostile Koreans, joining hands with lawless elements in Russia, attempted in 1920 to invade Korea through the Chinese territory of Chientae. They set fire to the Japanese Consulate at Hunchun, and committed indiscriminate acts of murder and pillage. At the present time they are under the effective control of Japanese troops stationed in the Maritime Province, but they will no doubt renew the attempt to penetrate into Korea at the first favorable opportunity that may present itself.

"Having regard to those considerations, the Japanese Government have felt bound to exercise precaution in carrying out the contemplated evacuation of the Maritime Province. Should they take hasty action without ade-

quate provision for the future they would be delinquent in their duty of affording protection to a large number of their nationals resident in the districts in question and of maintaining order and security in Korea.

"It should be made clear that no part of the Maritime Province is under Japan's military occupation. Japanese troops are still stationed in the southern portion of that Province, but they have not set up any civil or military administration to displace local authorities. Their activity is confined to measures of self-protection against the menace to their own safety and to the safety of their country and nationals. They are not in occupation of those districts any more than American or other Allied troops could be said to have been in occupation of the places in which they were formerly stationed.

"The Japanese Government are anxious to see an orderly and stable authority speedily reestablished in the Far Eastern possessions of Russia. It was in this spirit that they manifested a keen interest in the patriotic but ill-fated struggle of Admiral Kolchak. They have shown readiness to lend their good offices for prompting the reconciliation of various political groups in Eastern Siberia. But they have carefully refrained from supporting one faction against another. It will be recalled, for instance, that they withheld all assistance from General Rozanow against the revolutionary movements which led to his overthrow in January, 1920. They maintained an attitude of strict neutrality, and refused to interfere in these movements, which it would have been quite easy for them to suppress if they had so desired.

"In relation to this policy of nonintervention, it may be useful to refer briefly to the past relations between the Japanese authorities and Ataman Semenoff, which seem to have been a source of popular misgiving and speculation. It will be remembered that the growing rapprochement between the Germans and the Bolshevik Government in Russia in the early part of 1918 naturally gave rise to apprehensions in the allied countries that a considerable quantity of munitions supplied by those countries and stored in Vladivostok might be removed by the Bolsheviks to European Russia for the use of the Germans. Ataman Semenoff was then in Siberia and was organizing a movement to check such Bolshevik activities and to preserve order and stability in that region. It was in this situation that Japan, as well as some of the Allies, began to give support to the Cossack chief. After a few months, such support by the other powers was discontinued. But the Japanese were reluctant to abandon their friend, whose efforts in the allied cause they had originally encouraged; and they maintained for some time their connection with Ataman Semenoff. They had, however, no intention whatever of interfering in the domestic affairs of Russia, and when it was found that the assistance rendered to the Ataman was likely to complicate the internal situation in Siberia, they terminated all relations with him, and no support of any kind has since been extended to him by the Japanese authorities.

"The Japanese Government are now seriously considering plans which would justify them in carrying out their decision of the complete withdrawal of Japanese troops from the Maritime Province, with reasonable precaution for the security of Japanese residents and of the Korean frontier regions. It is for this purpose that negotiations were opened some time ago at Dairen between the Japanese representatives and the agents of the Chita Government.

"Those negotiations at Dairen are in no way intended to secure for Japan any right or advantage of an exclusive nature. They have been solely actuated by a desire to adjust some of the more pressing questions with which

Japan is confronted in relation to Siberia. They have essentially in view the conclusion of provisional commercial arrangements, the removal of the existing menace to the security of Japan and to the lives and property of Japanese residents in Eastern Siberia, the provision of guarantees for the freedom of lawful undertakings in that region, and the prohibition of bolshevik propaganda over the Siberian border. Should adequate provisions be arranged on the line indicated the Japanese Government will at once proceed to the complete withdrawal of Japanese troops from the Maritime Province.

"The occupation of certain points in the Russian Province of Sakhalin is wholly different, both in nature and in origin, from the stationing of troops in the Maritime Province. History affords few instances similar to the incident of 1920 at Nikolaievsk, where more than seven hundred Japanese, including women and children, as well as the duly recognized Japanese Consul and his family and his official staff, were cruelly tortured and massacred. No nation worthy of respect will possibly remain forbearing under such a strain of provocation. Nor was it possible for the Japanese Government to disregard the just popular indignation aroused in Japan by the incident. Under the actual condition of things, Japan found no alternative but to occupy, as a measure of reprisal, certain points in the Russian Province of Sakhalin in which the outrage was committed, pending the establishment in Russia of a responsible authority with whom she can communicate in order to obtain due satisfaction.

"Nothing is further from the thought of the Japanese Government than to take advantage of the present helpless conditions of Russia for prosecuting selfish designs. Japan recalls with deep gratitude and appreciation the brilliant rôle which Russia played in the interest of civilization during the earlier stage of the Great War. The Japanese people have shown and will continue to show every sympathetic interest in the efforts of patriotic Russians aspiring to the unity and rehabilitation of their country. The military occupation of the Russian Province of Sakhalin is only a temporary measure, and will naturally come to an end as soon as a satisfactory settlement of the question shall have been arranged with an orderly Russian Government.

"In conclusion, the Japanese Delegation is authorized to declare that it is the fixed and settled policy of Japan to respect the territorial integrity of Russia, and to observe the principle of nonintervention in the internal affairs of that country, as well as the principle of equal opportunity for the commerce and industry of all nations in every part of the Russian possessions."

The reply on behalf of the American Government which was made by the Secretary of State, reviewed the position which the United States had consistently maintained in diplomatic interchanges with Japan and maintained explicitly this attitude of protest. The statement is as follows:

"The American Delegation has heard the statement by Baron Shidehara and has taken note of the assurances given on behalf of the Japanese Government with respect to the withdrawal of Japanese troops from the Maritime Province of Siberia and from the Province of Sakhalin. The American Delegation has also noted the assurance of Japan by her authorized spokesman that it is her fixed and settled policy to respect the territorial integrity of Russia, and to observe the principle of nonintervention in the internal affairs of that country, as well as the principle of equal opportunity for the commerce and industry of all nations in every part of the Russian possessions.

"These assurances are taken to mean that Japan does not seek, through

her military operations in Siberia, to impair the rights of the Russian people in any respect, or to obtain any unfair commercial advantages, or to absorb for her own use the Siberian fisheries, or to set up an exclusive exploitation either of the resources of Sakhalin or of the Maritime Province.

"As Baron Shidehara pointed out, the military expedition of Japan to Siberia was originally undertaken in common accord and in cooperation with the United States. It will be recalled that public assurances were given at the outset by both Governments of a firm intention to respect the territorial integrity of Russia and to abstain from all interference in Russian internal politics. In view of the reference by Baron Shidehara to the participation of the American Government in the expedition of 1918, I should like to place upon our records for transmission to the Conference the purposes which were then clearly stated by both Governments.

"The American Government set forth its aims and policies publicly in July, 1918. The purposes of the expedition were said to be, first, to help the Czecho-Slovaks consolidate their forces; second, to steady any efforts at self-government or self-defense in which the Russians themselves might be willing to accept assistance; and, third, to guard the military stores at Vladivostok.

"The American Government opposed the idea of a military intervention, but regarded military action as admissible at the time solely for the purpose of helping the Czecho-Slovaks consolidate their forces and get into successful cooperation with their Slavic kinsmen, and to steady any efforts at self-government or self-defense in which the Russians themselves might be willing to accept assistance. It was stated that the American Government proposed to ask all associated in this course of action to unite in assuring the people of Russia in the most public and solemn manner that none of the Governments uniting in action either in Siberia or in northern Russia contemplated any interference of any kind with the political sovereignty of Russia, any intervention in her internal affairs, or any impairment of her territorial integrity either now or thereafter, but that each of the Associated Powers had the single object of affording such aid as should be acceptable, and only such aid as should be acceptable, to the Russian people in their endeavor to regain control of their own affairs, their own territory, and their own destiny.

"What I have just stated is found in the public statement of the American Government at that time.

"The Japanese Government, with the same purpose, set forth its position in a statement published by the Japanese Government on August 2, 1918, in which it was said:

"The Japanese Government, being anxious to fall in with the desires of the American Government and also to act in harmony with the Allies in this expedition, have decided to proceed at once to dispatch suitable forces for the proposed mission. A certain number of these troops will be sent forthwith to Vladivostok. In adopting this course, the Japanese Government remain unshaken in their constant desire to promote relations of enduring friendship with Russia and the Russian people, and reaffirm their avowed policy of respecting the territorial integrity of Russia and of abstaining from all interference in her internal politics. They further declare that, upon the realization of the projects above indicated, they will immediately withdraw all Japanese troops from Russian territory and will leave wholly unimpaired the sovereignty of Russia in all its phases, whether political or military.'

"The United States of America withdrew its troops from Siberia in the spring of 1920, because it considered that the original purposes of the expedi-

tion had either been accomplished or would not longer be subserved by continued military activity in Siberia. The American Government then ceased to be a party to the expedition, but it remained a close observer of events in Eastern Siberia and has had an extended diplomatic correspondence upon this subject with the Government of Japan.

"It must be frankly avowed that this correspondence has not always disclosed an identity of views between the two Governments. The United States has not been unmindful of the direct exposure of Japan to Bolshevism in Siberia and the special problems which the conditions existing there have created for the Japanese Government, but it has been strongly disposed to the belief that the public assurances given by the two Governments at the inception of the joint expedition nevertheless required the complete withdrawal of Japanese troops from all Russian territory—if not immediately after the departure of the Czecho-Slovak troops, then within a reasonable time.

"As to the occupation of Sakhalin in reprisal for the massacre of the Japanese at Nikolaievsk, the United States, not unimpressed by the serious character of that catastrophe, but, having in mind the conditions accepted by both Governments at the outset of the joint expedition, of which the Nikolaievsk massacres must be considered an incident, it has regretted that Japan should deem necessary the occupation of Russian territory as a means of assuring a suitable adjustment with a future Russian Government.

"The general position of the American Government was set forth in a communication to Japan of May 31, 1921. In that communication appears the following statement:

"The Government of the United States would be untrue to the spirit of cooperation which led it, in the summer of 1918, upon an understanding with the Government of Japan, to dispatch troops to Siberia, if it neglected to point out that, in its view, continued occupation of the strategic centers in Eastern Siberia—involving the indefinite possession of the port of Vladivostok, the stationing of troops at Habarovsk, Nikolaievsk, De Castries, Mago, Sophiesk, and other important points, the seizure of the Russian portion of Sakhalin, and the establishment of a civil administration, which inevitably lends itself to misconception and antagonism—tends rather to increase than to allay the unrest and disorder in that region.

"The military occupation—I am still reading from the note of May 31, 1921—'The military occupation in reprisal for the Nikolaievsk affair is not fundamentally a question of the validity of procedure under the recognized rules of international law.'

"The note goes on to say that 'the issue presented is that of the scrupulous fulfillment of the assurances given to the Russian people, which were a matter of frank exchanges and of apparently complete understanding between the Government of the United States and of Japan. These assurances were intended by the Government of the United States to convey to the people of Russia a promise on the part of the two Governments not to use the joint expedition, or any incidents which might arise out of it, as an occasion to occupy territory, even temporarily, or to assume any military or administrative control over the people of Siberia.'

"Further, in the same note, the American Government stated its position as follows:

"In view of its conviction that the course followed by the Government of Japan brings into question the very definite understanding concluded at the time troops were sent to Siberia, the Government of the United States

must in candor explain its position and say to the Japanese Government that the Government of the United States can neither now nor hereafter recognize as valid any claims or titles arising out of the present occupation and control, and that it can not acquiesce in any action taken by the Government of Japan which might impair existing treaty rights or the political or territorial integrity of Russia.

"The Government of Japan will appreciate that, in expressing its views, the Government of the United States has no desire to impute to the Government of Japan motives or purposes other than those which have heretofore been so frankly avowed. The purpose of this Government is to inform the Japanese Government of its own conviction that, in the present time of disorder in Russia, it is more than ever the duty of those who look forward to the tranquilization of the Russian people, and a restoration of normal conditions among them, to avoid all action which might keep alive their antagonism and distrust toward outside political agencies. Now, especially, it is incumbent upon the friends of Russia to hold aloof from the domestic contentions of the Russian people, to be scrupulous to avoid inflicting what might appear to them a vicarious penalty for sporadic acts of lawlessness, and, above all, to abstain from even the temporary and conditional impairment by any foreign Power of the territorial status which, for them as for other peoples, is a matter of deep and sensitive national feeling transcending perhaps even the issues at stake among themselves."

"To that American note the Japanese Government replied in July, 1921, setting forth in substance what Baron Shidehara has now stated to this Committee, pointing out the conditions under which Japan had taken the action to which reference was made, and giving the assurances, which have here been reiterated, with respect to its intention and policy.

"While the discussion of these matters has been attended with the friendliest feeling, it has naturally been the constant and earnest hope of the American Government—and of Japan as well, I am sure—that this occasion for divergence of views between the two Governments might be removed with the least possible delay. It has been with a feeling of special gratification, therefore, that the American Delegation has listened to the assurances given by their Japanese colleague, and it is with the greatest friendliness that they reiterate the hope that Japan will find it possible to carry out within the near future her expressed intention of terminating finally the Siberian expedition and of restoring Sakhalin to the Russian people."

On behalf of the French Government M. Sarraut said—

"he gave his full and unreserved adherence to this resolution. In giving this unreserved adherence, he liked to remember that France was the oldest ally, perhaps, of Russia, and in this respect it was with a particular feeling of gratification that he would state that he had listened with great pleasure to the exchange of views that had just taken place before the Committee between the representatives of the United States and Japan. The French Government would hear with the same feelings the formal assurance given by Baron Shidehara of the intention of the Japanese Government concerning Siberia; of Japan's desire to withdraw her troops from Russia as soon as possible; of its firm intention not to interfere in the domestic affairs of Russia; and of its firm purpose to respect the integrity of Russia.

"France had full trust in Japan, who had always proved a loyal and trustworthy friend. It was quite certain that this assurance would be carried out. France accepted this with all the more pleasure because it was exactly the

program which the French Government had adopted in 1918 and which led them to interfere in Siberia under the same conditions as those set forth so exactly by the Secretary of State of the United States. At this point he could not fail to restate quite clearly France's intention, like that of her Allies, to respect the integrity of Russia, and to have the integrity of Russia respected, and not to interfere in her internal policy.

"France remained faithful to the friendship of Russia, which she could not forget. She entertained feelings of gratitude to the Russian people, as she did to her other Allies. Russia had been her friend of the first hour, and she was loyal; she had stuck to her word until the Russian Government was betrayed in the way with which those present were familiar. France also remained faithful to the hope that the day would come when through the channel of a normal and regular government great Russia would be able to go ahead and fulfill her destiny. Then it would be good for her to find unimpaired the patrimony that had been kept for her by the honesty and loyalty of her allies. It was with this feeling that the French Delegation with great pleasure concurred in the adoption of the present resolution."

These statements did not immediately effect a change in the Siberian situation but they were nonetheless of the utmost importance. In the first place, the position of the United States was publicly and definitely reasserted. Further, while Japan did not fix a date for the withdrawal of her troops, she did give the most solemn and comprehensive assurance to all the Powers represented in the Conference of her fixed and settled policy "to respect the territorial integrity of Russia, and to observe the principle of non-intervention in the internal affairs of that country, as well as the principle of equal opportunity for the commerce and industry of all nations in every part of the Russian possessions."

This constitutes a pledge which no doubt will be fully redeemed. While Japan has not fixed the date for the withdrawal of her troops from Siberia, she has renounced all claims of territorial aggrandizement, of political domination, or of exclusive or preferential privilege.

CHINESE EASTERN RAILWAY

The other question affecting Siberian interests directly; that is, that of the Chinese Eastern Railway, was also of the nature of a continuing diplomatic problem insusceptible of definite disposition at the Conference. This railway involves a great complexity of international interests; that of the United States is to assure its continued operation as a free avenue of commerce, to discharge the responsibility for the railroad which the United States assumed to some extent in 1919 in cooperation with Japan and four other Powers in an arrangement for the supervision and assistance of this and other links in the Trans-Siberian system, and to recover its just claims for advances.

In order to ascertain what, if anything, the Conference might usefully do to preserve the railway and increase its technical efficiency, the Committee on Pacific and Far Eastern Questions, and its technical sub-committee, gave the problem the most careful consideration.

It was finally found to be impossible to do more than to adopt the following resolution:

"Resolved, That the preservation of the Chinese Eastern Railway for those in interest requires that better protection be given to the railway and the persons engaged in its operation and use, a more careful selection of personnel to secure efficiency of service, and a more economical use of funds to prevent waste of the property; that the subject should immediately be dealt with through the proper diplomatic channels."

The Powers other than China made the following reservation:

"The Powers other than China in agreeing to the resolution regarding the Chinese Eastern Railway reserve the right to insist hereafter upon the responsibility of China for performance or nonperformance of the obligations towards the foreign stockholders, bondholders, and creditors of the Chinese Eastern Railway Company which the Powers deem to result from the contracts under which the railroad was built and the action of China thereunder and the obligations which they deem to be in the nature of a trust resulting from the exercise of power by the Chinese Government over the possession and administration of the railroad."

While, as thus appears, it proved to be necessary to leave these questions for future diplomatic adjustment, not a little was accomplished in ascertaining and clarifying the views of the various governments. The discussions established unanimity among the Powers, other than China, as to the immediate need for more adequate protection of the railway and the impracticability of obtaining financial support without effective financial control, assuring the economical operation of the railway. The Conference effectively recognized Chinese sovereign rights in respect to the railway, but in the reservation above quoted made clear to China the immense responsibilities she might incur by a reckless use of her sovereign prerogatives. The Chinese delegates were impressed by this aspect of the question, and it is understood that they have already recommended to their Government that it take measures immediately and spontaneously to improve the military protection of the railway. It has been suggested to the Chinese delegates also, and has won a certain favorable response from them, that China would be well advised to take the initiative in the diplomatic interchanges which will ensue as a result of the resolution adopted, in requesting at once the cooperation of the other Powers in maintaining the railway. It may prove possible to arrive at practical results in this way while preserving Chinese sovereignty and amour propre. General assent was obtained at the Conference to the continuance in force of the agreement of 1919 for the supervision of the railway.

MANDATED ISLANDS

For some time there have been negotiations between the United States and Japan in relation to the so-called mandated islands in the Pacific Ocean north of the Equator. While the Conference was in session these negotia-

tions resulted in an agreement between the American Government and the Japanese Government, which is to be embodied in a treaty. The points of the agreement are as follows:

1. It is agreed that the United States shall have free access to the Island of Yap on the footing of entire equality with Japan or any other nation, in all that relates to the landing and operation of the existing Yap-Guam cable or of any cable which may hereafter be laid by the United States or its nationals.

2. It is also agreed that the United States and its nationals are to be accorded the same rights and privileges with respect to radio-telegraphic service as with regard to cables. It is provided that so long as the Japanese Government shall maintain on the Island of Yap an adequate radio-telegraphic station, cooperating effectively with the cables and with other radio stations on ships and shore, without discriminatory exactions or preferences, the exercise of the right to establish radiotelegraphic stations at Yap by the United States or its nationals shall be suspended.

3. It is further agreed that the United States shall enjoy in the Island of Yap the following rights, privileges, and exemptions in relation to electrical communications:

(a) Rights of residence without restriction; and rights of acquisition and enjoyment and undisturbed possession, upon a footing of entire equality with Japan or any other nation or their respective nationals of all property and interests, both personal and real, including lands, buildings, residences, offices, works, and appurtenances.

(b) No permit or license to be required for the enjoyment of any of these rights and privileges.

(c) Each country to be free to operate both ends of its cables either directly or through its nationals including corporations or associations.

(d) No cable censorship or supervision of operation or messages.

(e) Free entry and exit for persons and property.

(f) No taxes, port, harbor, or landing charges, or exactions, either with respect to operation of cables or to property, persons, or vessels.

(g) No discriminatory police regulations.

4. Japan agrees that it will use its power of expropriation to secure to the United States needed property and facilities for the purpose of electrical communication in the Island, if such property or facilities can not otherwise be obtained. It is understood that the location and area of land to be so expropriated shall be arranged each time between the two Governments, according to the requirements of each case. American property and facilities for the purpose of electrical communication in the Island are to be exempt from the process of expropriation.

5. The United States consents to the administration by Japan of the mandated islands in the Pacific Ocean north of the Equator subject to the above provisions with respect to the Island of Yap, and also subject to the following conditions:

"(a) The United States is to have the benefit of the engagements of Japan set forth in the mandate, particularly those as follows:

"ARTICLE 3

"The Mandatory shall see that the slave trade is prohibited and that no forced labour is permitted, except for essential public work and services, and then only for adequate remuneration.

"The Mandatory shall also see that the traffic in arms and ammunition is controlled in accordance with principles analogous to those laid down in the Convention relating to the control of the arms traffic, signed on September 10th, 1919, or in any convention amending same.

"The supply of intoxicating spirits and beverages to the natives shall be prohibited."

"ARTICLE 4

"The military training of the natives, otherwise than for purposes of internal police and the local defense of the territory, shall be prohibited. Furthermore, no military or naval bases shall be established or fortifications erected in the territory."

"(b) With respect to missionaries, it is agreed that Japan shall ensure complete freedom of conscience and the free exercise of all forms of worship, which are consonant with public order and morality, and that missionaries of all such religions shall be free to enter the territory, and to travel and reside therein, to acquire and possess property, to erect religious buildings, and to open schools throughout the territory. Japan shall, however, have the right to exercise such control as may be necessary for the maintenance of public order and good government, and to take all measures required for such control.

"(c) Japan agrees that vested American property rights will be maintained and respected.

"(d) It is agreed that the treaties between the United States and Japan now in force shall apply to the mandated islands.

"(e) It is agreed that any modifications in the Mandate are to be subject to the consent of the United States, and, further, that Japan will address to the United States a duplicate report on the administration of the Mandate."

No agreement has yet been made with respect to the so-called mandated islands in the Pacific Ocean south of the Equator. The assent of the United States to these mandates has not yet been given, and the subject is left to negotiations between the United States and Great Britain.

No action was taken with respect to electrical communications in the Pacific. The allocation of the former German cables are matters to be dealt with by the five Principal Allied and Associated Powers and will be the subject of diplomatic negotiations.

GENERAL SUMMARY

To estimate correctly the character and value of these several treaties, resolutions and formal declarations they should be considered as a whole. Each one contributes its part in combination with the others towards the

establishment of conditions in which peaceful security will take the place of competitive preparation for war.

The declared object was, in its naval aspect, to stop the race of competitive building of warships which was in process and which was so distressingly like the competition that immediately preceded the war of 1914. Competitive armament, however, is the result of a state of mind in which a national expectation of attack by some other country causes preparation to meet the attack. To stop competition it is necessary to deal with the state of mind from which it results. A belief in the pacific intentions of other powers must be substituted for suspicion and apprehension.

The negotiations which led to the Four Power Treaty were the process of attaining that new state of mind, and the Four Power Treaty itself was the expression of that new state of mind. It terminated the Anglo-Japanese alliance and substituted friendly conference in place of war as the first reaction from any controversies which might arise in the region of the Pacific; it would not have been possible except as part of a plan including a limitation and a reduction of naval armaments, but that limitation and reduction would not have been possible without the new relations established by the Four Power Treaty or something equivalent to it.

The new relations declared in the Four Power Treaty could not, however, inspire confidence or be reasonably assured of continuance without a specific understanding as to the relations of the powers to China. Such an understanding had two aspects. One related to securing fairer treatment of China, and the other related to the competition for trade and industrial advantages in China between the outside powers.

An agreement covering both of these grounds in a rather fundamental way was embodied in the first article of the general Nine Power Treaty regarding China. In order, however, to bring the rules set out in that article out of the realm of mere abstract propositions and make them practical rules of conduct it was necessary to provide for applying them so far as the present conditions of government and social order in China permit. This was done by the remaining provisions of the general Nine Power Treaty and Chinese Customs Treaty and the series of formal resolutions adopted by the Conference in its Plenary Sessions and the formal declarations made a part of the record of the Conference.

The scope of action by the Conference in dealing with Chinese affairs was much limited by the disturbed conditions of government in China which have existed since the revolution of 1911, and which still exist, and which render effective action by that government exceedingly difficult and in some directions impracticable. In every case the action of the Conference was taken with primary reference to giving the greatest help possible to the Chinese people in developing a stable and effective government really representative of the people of China. Much was accomplished in that direction, and the rules of conduct set forth in the first article of the General Treaty

regarding China have not merely received the assent of the Powers but have been accepted and applied to concrete cases.

The sum total of the action taken in the Conference regarding China, together with the return of Shantung by direct agreement between China and Japan, the withdrawal of the most unsatisfactory of the so-called "twenty-one demands," and the explicit declaration of Japan regarding the closely connected territory of Eastern Siberia, justify the relation of confidence and good will expressed in the Four Power Treaty and upon which the reduction of armament provided in the Naval Treaty may be contemplated with a sense of security.

In conclusion, we may be permitted to quote the words of the President in closing the Conference:

"This Conference has wrought a truly great achievement. It is hazardous sometimes to speak in superlatives, and I will be restrained. But I will say, with every confidence, that the faith plighted here to-day, kept in national honor, will mark the beginning of a new and better epoch in human progress.

"Stripped to the simplest fact, what is the spectacle which has inspired a new hope for the world? Gathered about this table nine great nations of the world—not all, to be sure, but those most directly concerned with the problems at hand—have met and have conferred on questions of great import and common concern, on problems menacing their peaceful relationship, on burdens threatening a common peril. In the revealing light of the public opinion of the world, without surrender of sovereignty, without impaired nationality or affronted national pride, a solution has been found in unanimity, and to-day's adjournment is marked by rejoicing in the things accomplished. If the world has hungered for new assurance, it may feast at the banquet which the Conference has spread.

"I am sure the people of the United States are supremely gratified, and yet there is scant appreciation how marvelously you have wrought. When the days were dragging and agreements were delayed, when there were obstacles within and hindrances without, few stopped to realize that here was a conference of sovereign powers where only unanimous agreement could be made the rule. Majorities could not decide without impinging national rights. There were no victors to command, no vanquished to yield. All had voluntarily to agree in translating the conscience of our civilization and give concrete expression to world opinion.

"And you have agreed in spite of all difficulties, and the agreements are proclaimed to the world. No new standards of national honor have been sought, but the indictments of national dishonor have been drawn, and the world is ready to proclaim the odiousness of perfidy or infamy.

* * *

"It has been the fortune of this Conference to sit in a day far enough removed from war's bitterness, yet near enough to war's horrors, to gain the benefit of both the hatred of war and the yearning for peace. Too often, heretofore, the decades following such gatherings have been marked by the difficult undoing of their decisions. But your achievement is supreme because no seed of conflict has been sown, no reaction in regret or resentment ever can justify resort to arms.

"It little matters what we appraise as the outstanding accomplishments. Any one of them alone would have justified the Conference. But the whole achievement has so cleared the atmosphere that it will seem like breathing the refreshing air of a new morn of promise.

"You have written the first deliberate and effective expression of great powers, in the consciousness of peace, of war's utter futility, and challenged the sanity of competitive preparation for each other's destruction. You have halted folly and lifted burdens, and revealed to the world that the one sure way to recover from the sorrow and ruin and staggering obligations of a world war is to end the strife in preparation for more of it, and turn human energies to the constructiveness of peace.

"Not all the world is yet tranquillized. But here is the example, to imbue with new hope all who dwell in apprehension. At this table came understanding, and understanding brands armed conflict as abominable in the eyes of enlightened civilization."

* * *

"No intrigue, no offensive or defensive alliances, no involvements have wrought your agreements, but reasoning with each other to common understanding has made new relationships among Governments and peoples, new securities for peace, and new opportunities for achievement and attending happiness.

"Here have been established the contacts of reason, here has come the inevitable understandings of face-to-face exchanges when passion does not inflame. The very atmosphere shamed national selfishness into retreat. Viewpoints were exchanged, differences composed, and you came to understand how common, after all, are human aspirations; how alike, indeed, and how easily reconcilable are our national aspirations; how sane and simple and satisfying to seek the relationships of peace and security.

"When you first met, I told you of our America's thought to seek less of armament and none of war; that we sought nothing which is another's, and we were unafraid, but that we wished to join you in doing that finer and nobler thing which no nation can do alone. We rejoice in that accomplishment. * * * "

Respectfully submitted.

CHARLES E. HUGHES.
HENRY CABOT LODGE.
OSCAR W. UNDERWOOD.
ELIHU ROOT.

ADDRESS OF THE PRESIDENT OF THE UNITED STATES
SUBMITTING TO THE SENATE THE TREATIES AND
RESOLUTIONS APPROVED AND ADOPTED BY THE
CONFERENCE ON THE LIMITATION OF
ARMAMENT ¹

February 10, 1922

MR. PRESIDENT AND GENTLEMEN OF THE SENATE:

I have come to make report to you of the conclusions of what has been termed the Washington Conference on the Limitation of Armament, and to lay before you the series of treaties which the United States and the other powers participating in the conference have negotiated and signed, and have announced to the world. Apart from the very great satisfaction in reporting to the Senate, it is a privilege as well as a duty to ask that advice and consent which the Constitution requires to make these covenants effective.

Accompanying the treaties I bring to you the complete minutes of both plenary sessions and committee meetings, and a copy of the official report made to me by the American Delegation to the conference. Both the complete minutes and the official report of the American Delegation are new accompaniments to the Executive report of a treaty or treaties, but they are fitting testimonials to that open and simpler diplomacy for which the world has asked, and the practice of which contributed largely to the success of the conference so recently adjourned. I trust they will facilitate that ample and helpful understanding which is desirable in the Senate, and reflect that understanding which was the keynote of the conference itself.

The whole transaction is quite out of the ordinary. I am not thinking of the achievement, which I hope the Senate will come to appraise highly as I do, and as the world seems to do. I am not thinking of the commendable processes by which agreements were wrought, though this was a conference wholly of free nations, exercising every national right and authority, in which every agreement was stamped with unanimity. Indeed, it was a conference of friends, proceeding in deliberation and sympathy, appraising their friendly and peaceful relations and resolved to maintain them, and give to the world new assurances of peace and actual relief from the burdens of excessive and competitive armament. But the out-of-the-ordinary phases which I have in mind are that the Senate—indeed, the Congress—has already advised in favor of one—and inferentially of two—of the treaties

¹ Senate Document, No. 125, 67th Cong., 2d Sess.

laid before you to-day, and the naval pact negotiated and signed is in accordance with your expressed wish. It calls a halt in the competitive construction of capital ships in the great navies of the world, and affords the first actual relief from naval burdens which peoples have been able to acclaim since steam and steel combined to add to naval strength in warfare.

But, though the treaty recommended by the Congress marks the beginning of a naval holiday and that limitation of naval armament which accords with a world aspiration, the particular justification of this progressive and highly gratifying step was the settlement of the international problems of the Pacific, attended by new understandings in place of menacing disagreements, and established sureties instead of uncertainties which easily might lead to conflict. Much as it was desirable to lift the burdens of naval armament and strike at the menace of competitive construction and consequent expenditure, the Executive branch of the Government, which must be watchful for the Nation's safety, was unwilling to covenant a reduction of armament until there could be plighted new guaranties of peace, until there could be removed the probable menaces of conflict. Therefore all the treaties submitted for your approval have such important relationship, one to another, that, though not interdependent, they are the covenants of harmony, of assurance, of conviction, of conscience, and of unanimity. These we have believed to be essential to perfect the fulfillment which the Congress has in mind.

As a simple matter of fact, all of the agreements, except those dealing directly with the limitation of armament, take the place of various multi-power treaties, arrangements or understandings, formal or informal, expressed or implied, relating to matters in the Pacific Ocean, in which all the powers signatory were essentially, if not equally, concerned. The new agreements serve to put an end to contradictions, to remove ambiguities, and establish clear understandings.

No matter what mental reservations may have existed, or what doubts may have prevailed, because here was an experiment new in many phases, all of the powers came to the conference knowing it was to deal with very practical situations affecting their international relations. There was mutual interest, quite apart from the greater achievement for world peace, and a way to common understanding was found to be practical and speedily arranged. If it has developed a new-world school of diplomacy, let it be so called. It revealed the ends aimed at in the very beginning, and pointed the way to their attainment. The powers in conference took the world of the Pacific as they found it in fact. They dealt with actualities by voluntary and unanimous agreement, and have added to mankind's assurances and hopefully advanced international peace.

It is worth while saying that the powers in this conference sought no concert to dispossess any power of its rights or property. All the signatories have given up certain rights which they had, as their contribution to concord

and peace, but at no sacrifice of national pride, with no regret or resentment to later flame in conflict. Some relinquished certain rights or prerogatives which they had asserted, notably in the settlement of the Shantung controversy, dealt with in a covenant quite apart from the group herewith submitted. But every concession was a willing one, without pressure or constraint. The conference record is quite unparalleled, not alone because there was the maximum of good feeling and neighborliness throughout the session, but common rejoicing in the results; and the separations in departure were marked by genuine cordiality, good will, and new hopes.

It is not necessary to remind you that the conference work was not directed against any power or group of powers. There were no punishments to inflict, no rewards to bestow. Mutual consideration, and the common welfare, and the desire for world peace impelled. The conclusions reached and the covenants written neither require nor contemplate compulsive measures against any power in the world, signatory or non-signatory. The offerings are free will; the conscience is that of world-opinion; the observance is a matter of national honor.

These treaties leave no power despoiled. The delegates of every power participating adjourned with every right and every authority with which they came, except that which was willingly and gladly given up to further the common welfare. I can assure you the nine powers have been brought more closely together, they are stauncher neighbors and friends, they have clearer and better estimates of one another, they have seen suspicion challenged and selfishness made to retreat, they have keener and more sympathetic understandings, and they are more strongly willed for right and justice in international relations than ever before. I believe, with all my heart, the powers in conference have combined to make the world safer and better and more hopeful place in which to live.

It was a helpful thing to have the conference reveal how common our human aspirations are and how easy it is, when the task is properly approached, to reconcile our national aspirations. There are mutual and essential interests affecting the welfare and peace of all nations, and they can not be promoted by force. They can be revealed and magnified in that understanding which, it is now proven, the conference of peace promotes, and the same understanding makes compulsion and despoilment hateful in the eyes of mankind.

The treaties submitted, seven in number, are—

The covenant of limitation to naval armament between our republic, the British Empire, France, Italy, and Japan.

The treaty between the same powers in relation to the use of submarines and noxious gases in warfare.

The treaty between the United States, the British Empire, France, and Japan relating to their insular possessions and their insular dominions in the Pacific.

A declaration accompanying the four-power treaty reserving American rights in mandated territory.

An agreement supplementary to the four-power treaty defining the application of the term "insular possession and insular dominions" as relating to Japan.

A treaty between the nine powers in the conference relating to principles and policies to be followed in matters concerning China.

A treaty between the nine powers relating to Chinese customs tariff.

I invite your prompt approval of all of them. It is quite impossible to readjust our naval program until the naval treaty has your sanction, even though you urged its negotiation. It is not possible to make the readjustment in full confidence, until the whole program has commended itself to your approval.

I am not unmindful, nor was the conference, of the sentiment in this Chamber against Old World entanglements. Those who made the treaties have left no doubt about their true import. Every expression in the conference has emphasized the purpose to be served and the obligations assumed. Therefore, I can bring you every assurance that nothing in any of these treaties commits the United States, or any other power, to any kind of an alliance, entanglement, or involvement. It does not require us or any power to surrender a worthwhile tradition. It has been said, if this be true, these are mere meaningless treaties, and therefore valueless. Let us accept no such doctrine of despair as that. If nations may not establish by mutual understanding the rules and principles which are to govern their relationship; if a sovereign and solemn plight of faith by leading nations of the earth is valueless; if nations may not trust one another, then, indeed, there is little on which to hang our faith in advancing civilization or the furtherance of peace. Either we must live and aspire and achieve under a free and common understanding among peoples, with mutual trust, respect, and forbearance, and exercising full sovereignty, or else brutal, armed force will dominate, and the sorrows and burdens of war in this decade will be turned to the chaos and hopelessness of the next. We can no more do without international negotiations and agreements in these modern days than we could maintain orderly neighborliness at home without the prescribed rules of conduct which are more the guaranties of freedom than the restraint thereof.

The world has been hungering for a better relationship for centuries since it has attained its larger consciousness. The conception of the League of Nations was a response to a manifest world hunger. Whatever its fate, whether it achieves the great things hoped for, or comes to supersedure, or to failure, the American unwillingness to be a part of it has been expressed. That unwillingness has been kept in mind, and the treaties submitted to-day have no semblance or relationship save as the wish to promote peace has been the common inspiration.

The four-power treaty contains no war commitment. It covenants the

respect of each nation's rights in relation to its insular possessions. In case of controversy between the covenanting powers it is agreed to confer and seek adjustment, and if said rights are threatened by the aggressive action of any outside power, these friendly powers, respecting one another, are to communicate, perhaps confer, in order to understand what action may be taken, jointly or separately, to meet a menacing situation. There is no commitment to armed force, no alliance, no written or moral obligation to join in defence, no expressed or implied commitment to arrive at any agreement except in accordance with our constitutional methods. It is easy to believe, however, that such a conference of the four powers is a moral warning that an aggressive nation, giving affront to the four great powers ready to focus world opinion on a given controversy, would be embarking on a hazardous enterprise.

Frankly, Senators, if nations may not safely agree to respect each other's rights, and may not agree to confer if one to the compact threatens trespass, or may not agree to advise if one party to the pact is threatened by an outside power, then all concerted efforts to tranquilize the world and stabilize peace must be flung to the winds. Either these treaties must have your cordial sanction, or every proclaimed desire to promote peace and prevent war becomes a hollow mockery.

We have seen the eyes of the world turned to the Pacific. With Europe prostrate and penitent, none feared the likelihood of early conflict there. But the Pacific had its menaces, and they deeply concerned us. Our territorial interests are larger there. Its waters are not strange seas to us, its farther shores not unknown to our citizens. Our earlier triumphs of commerce were there. We began treaty relationships with China full eighty years ago, in the youthful vigor of our republic, and the sailings of our clipper ships were the romance of our merchant marine, when it successfully challenged the competition of the world. Seventy years ago Commodore Perry revealed Japan to commerce, and there followed that surpassing development of the island empire, with whom our unbroken peace found a most gratifying reflex in the conference just closed.

A century ago we began planting the seeds of American friendship in Hawaii, and seventy years ago Webster told the Senate that the United States could "never consent to see these islands taken possession of by either of the great commercial powers of Europe." Whether it was destiny, or the development of propinquity, or the influence of our colonists, or faith in our institutions, Hawaii came under the flag in 1898, and rejoices to-day as a part of our Republic.

The lure of the waters, or the march of empire, or the call of commerce or inscrutable destiny led us on, and we went to the South Seas and planted the flag in Samoa. Out of the war with Spain came our sponsorship in the Philippines, and the possession of Guam; and so we are deeply concerned in the mid-Pacific, the South Seas, and the very center of the Far East. We

crave peace there as we do on the continent, and we should be remiss in performing a national duty if we did not covenant the relations which tend to guarantee it. For more than a half century we have had a part in influencing the affairs of the Pacific, and our present proposed commitments are not materially different in character, nor materially greater in extent, though fraught with vastly less danger, than our undertakings in the past.

We have convinced the on-looking and interested powers that we covet the possessions of no other power in the Far East, and we know for ourselves that we crave no further or greater governmental or territorial responsibilities there. Contemplating what is admittedly ours, and mindful of a long-time and reciprocal friendship with China, we do wish the opportunity to continue the development of our trade peacefully, and on equality with other nations, to strengthen our ties of friendship, and to make sure the righteous and just relationships of peace.

Holding the possessions we do, entertaining these views, and confessing these ambitions, why should we not make reciprocal engagements to respect the territory of others and contract their respect of ours, and thus quiet apprehension and put an end to suspicion?

There has been concern. There has been apprehension of territorial greed, a most fruitful cause of war. The conference has dissipated both, and your ratification of the covenants made will stabilize a peace for the breaking of which there is not a shadow of reason or real excuse. We shall not have less than before. No one of us shall have less than before. There is no narrowed liberty, no hampered independence, no shattered sovereignty, no added obligation. We will have new assurances, new freedom from anxiety, and new manifestations of the sincerity of our own intentions; a new demonstration of that honesty which proclaims a righteous and powerful republic.

I am ready to assume the sincerity and the dependability of the assurances of our neighbors of the Old World that they will respect our rights, just as I know we mean to respect theirs. I believe there is an inviolable national honor, and I bring to you this particular covenant in the confident belief that it is the outstanding compact of peace for the Pacific, which will justify the limitation of armament and prove a new guarantee to peace and liberty, and maintained sovereignty and free institutions.

No allusion has been made to the treaty restraining and limiting the use of the submarine, and the prohibition of noxious gases in warfare. Since we are asking the world's adherence, it is easily assumed that none in America will hold aloof.

Nor need I dwell on the nine-power treaty relating to principles and policies to be followed in the relationship of the signatory powers to China. Our traditional friendship for the ancient empire, our continued friendship for the new republic, our commitment of more than twenty years to the open door, and our avowed concern for Chinese integrity and unimpaired

sovereignty, make it easy to assume that the Senate will promptly and unanimously assent. China's own satisfaction in the restorations covenanted here has been officially expressed, quite apart from the testifying signatures.

Perhaps I may fittingly add a word which is suggested by my relationship as a former member of the Senate. I had occasion to learn of your very proper jealousy of the Senate's part in contracting foreign relationships. Frankly, it was in my mind when I asked representatives of both the majority and minority to serve on the American Delegation. It was designed to have you participate. And you were ably represented.

The Senate's concern for freedom from entanglements, for preserved traditions, for maintained independence, was never once forgotten by the American Delegates. If I did not believe these treaties brought us not only new guaranties of peace but greater assurances of freedom from conflict, I would not submit them to your consideration.

Much depends on your decision. We have joined in giving to the world the spectacle of nations gathering about the conference table, amid the convictions of peace, free from all passion, to face each other in the contacts of reason, to solve menacing problems, and end disputes, and clear up misunderstandings. They have agreed to confer again when desirable, and turn the revealing light of world opinion on any menace to peace among them. Your Government encouraged, and has signed the compacts which it had much to do in fashioning. If to these understandings for peace, if to these advanced expressions of the conscience of leading powers, if to these concords to guard against conflict and lift the burdens of armament, if to all of these the Senate will not advise and consent, then it will be futile to try again. Here has been exercised every caution consistent with accomplishment. Here was a beginning on your advice, no matter when conceived, and the program was enlarged, only because assurances of tranquillity were deemed the appropriate concomitants of the great experiment in arms limitation.

I alluded a moment ago to my knowledge of the viewpoint of the Senate, from personal experience. Since that experience I have come to know the viewpoint and inescapable responsibility of the Executive. To the Executive comes the closer view of world relationship and a more impressive realization of the menaces, the anxieties, and the apprehensions to be met.

We have no rivalries in our devotion to the things we call American, because that is a common consecration. None of us means to endanger, none of us would sacrifice a cherished national inheritance. In mindfulness of this mutuality of interest, common devotion, and shared authority, I submit to the Senate that if we can not join in making effective these covenants for peace, and stamp this conference with America's approval, we shall discredit the influence of the Republic, render future efforts futile or unlikely, and write discouragement where to-day the world is ready to acclaim new hope. Because of this feeling, because I believe in the merits of these engagements, I submit them to the Senate with every confidence that you will approve.

EDITORIAL COMMENT

THE POWER OF PUBLIC OPINION FOR PEACE

In contrast to the generally destructive effects of war, one outcome of the world war of real constructive value is the condemnation by public opinion throughout the world of all wars, except those which can be defined as strictly defensive.

This attitude of the present generation is a powerful asset for good in the world, but no effective plan has yet been adopted for giving it practical application in international relations. Notwithstanding the almost universal demand of the people of the world today that unjustifiable wars should be outlawed, no attempt has been made to define by international agreement what inducements justify war, or to bring the subject within the jurisdiction of international law.

The great opportunity offered at the Peace Conference at Paris, which we cannot hope to have reproduced, was sacrificed to the ambition of the seekers after political control over international relations in disregard of the basic principal of equal rights of all nations before the law. Nevertheless it is not yet too late to recover some of the lost ground.

At Paris the leading nations of the world were prepared to curtail their hitherto unquestioned right to declare war at pleasure for any reason or for no reason, and without accountability to the family of nations. If they are still willing to submit this sovereign right to legal restraints, the opportunity to impose these restraints might be utilized to extend the jurisdiction of international law beyond the mere regulation of warfare so as to cover the inception of war as well.

A beginning might be made by an agreement among the leading nations declaring that they recognized that, in the spirit of our Declaration of Independence, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to war, and binding each of them, before declaring war, except against an actual belligerent, to declare those causes to an international conference in which they agree to participate and to which all other nations concerned shall be invited, and that respectful consideration shall be given to any recommendations made by such conference, and further that at the call of any nation against which war is threatened they will meet in conference with that nation for the purpose of avoiding war if possible through mediation, conciliation, good offices, or other pacific measures.

To perfect the plan by bringing it within the realm of international law, a further step is necessary and that is for the nations to declare as a binding rule of law that an unprovoked war, or a war of aggression to deprive a nation of legitimate rights, or a war for causes which properly come within the definition of justiciable questions, or any other war which they may agree to stigmatize as unjustifiable, constitutes an international crime. If this were done any threat against the peace of the world would involve a question of a legal nature within the field of international law.

The recent war has demonstrated that no nation can be regarded as a stranger in interest to a dispute between other nations, and that every nation is threatened with an invasion of its rights by a breach of the peace between other nations, and consequently all nations are entitled to demand that no nation shall declare war unless it can show adequate cause.

The peoples of the world have at last come to a realization of their interdependence and mutual obligations, and this realization is in itself a sufficient sanction to ensure the observance of an agreement designed to promote peace by recognizing the jural equality of all civilized nations and demanding universal respect for the rights of each. The essential thing is that they should agree upon certain rules governing the conduct of nations toward each other, based upon the equal rights of all and that these rules should be formulated in terms so clear and simple that everyone can comprehend them, so that if any nation violates them it will challenge the judgment of public opinion throughout the world.

The irresistible power of public opinion as a world force when aroused, was eloquently described by Mr. Root in presenting to the Washington Conference the treaty limiting the use of submarines in warfare. He said, in part—

When a rule of action, clear and simple, is based upon the fundamental ideas of humanity and right conduct, and the public opinion of the world has reached a decisive judgment upon it, that rule will be enforced by the greatest power known to human history. The power that is the hope of the world will be a hope justified. That power was the object of the vast propaganda of the late war; that power was the means of determining the conflict in the late war; and that power, the clear opinion of the civilized world, stigmatizing a specific course of conduct as a violation of the fundamental rules of humanity and right, will visit a nation that violates its conclusion with a punishment that means national ruin.

Every nation will admit the truth of this and it is for this reason that no matter what the real cause of war may be, the nation declaring it invariably appeals to the public opinion of the world on the ground that it is a defensive war forced upon them by an aggressive enemy threatening their national security.

Instead of waiting, therefore, until after war is declared and then calling upon public opinion to finish it, the opportune time to bring public opinion to bear would seem to be before war is declared when, through some such

means as that above proposed, this greatest of all world forces would have an opportunity to prevent it.

CHANDLER P. ANDERSON.

THE INSTITUTE OF INTERNATIONAL LAW

The Institute of International Law held its first regular session in eight years in Rome, October 3rd, to October 10th, 1921. The choice of Rome was a happy augury for the future, for in the past the law of the world has proceeded from that city, and it is well to begin building up the new surrounded by the memories and traditions of the past.

Those who believe that we live in a new world, merely because there has been a World War, will be grievously disappointed with the new rules of law based upon old principles of justice. Those who believe, on the contrary, that we live in the same old world, chastened, it may be, by a World War, will, without disappointment, elation or pessimism, take up the world's work interrupted by war, as previous generations have done. We may dream of a brighter and a better future—we should, indeed, strive for it,—but we cannot break with the past.

The last regular session of the Institute was held in Oxford, August 1st to 9th, 1913, under the presidency of Doctor, now Sir Thomas Erskine Holland. It adopted a code of maritime warfare, incorporating more than one of the provisions of the Declaration of London. It decided to meet in September, 1914, in Munich, under the presidency of Mr. Heinrich Harburger. Arrangements of a very elaborate nature had been made for this meeting, but, to use a homely expression, Mr. Harburger "reckoned without his host." The late German Emperor had plans which were inconsistent with the meeting of the Institute. During the ensuing four years the minds and thoughts of men were bent on winning the war, not on reforming the law of nations. If the members of the Institute could have met even in a neutral place—which they could not, as the law of nations forbids citizens and subjects of enemy States from holding intercourse of any kind—their labors would have been fruitless from a scientific point of view.

After the armistice, a conference composed of representatives of the victorious Powers met at Paris on January 18, 1919. A goodly number of members and associates of the Institute of International Law were connected with the delegations of the nations participating in the conference. The members and associates met twice informally in the spring of 1919, and decided that it would be in the interest of the Institute to hold a special session or an extraordinary meeting of its members and associates in Paris during the session of the conference, which assured the attendance of a sufficient number to justify the meeting.

The governing board, called the Bureau of the Institute, consists of the President, the First Vice-President, and the Secretary-General. Mr. Har-

burger, the President, had died February 28, 1916. Sir Thomas Barclay, the First Vice-President resides in Paris, and Mr. Albéric Rolin, the Secretary-General, in Brussels. Both of these gentlemen attended the informal meetings of members and associates in Paris and, at the request of the members and associates, decided to act in the name of the Bureau, of which they form the majority, to call a special meeting for Thursday, the 8th of May, 1919. Twenty-four members and associates therefore met in the Law Faculty of the University of Paris, which was graciously placed at the disposal of the Institute by Professor Larnaude, Dean of the Faculty of Law.

Sir Thomas Barclay, as First Vice-President, opened the session and acted as President during the session. Professor André Weiss of France was elected Second Vice-President, and Mr. Albéric Rolin as Secretary-General was present and acted as such.

It was decided that the Institute, meeting in special session, should devote itself to the special purposes for which it had been called—that is to say, that it should make preparations for a formal meeting of the Institute, which it was hoped might be held in 1920. It was proposed that this session should be held in the City of Washington. The members of the Institute accepted the invitation, which was formally extended by Mr. Scott on behalf of the American members, and the Honorable Elihu Root was elected President for this session. It was decided that Sir Thomas Barclay, First Vice-President, should continue as First Vice-President until the formal meeting.

The members and associates wisely postponed the discussion of scientific questions as such until the formal session. They confined themselves to administrative matters and to those only which it was necessary to decide in advance of the formal session. There were in all some twenty commissions which had been formed from time to time for the consideration of questions which the Institute had decided to have examined before they should be taken up by the Institute at the formal session. Many of the members of these commissions had died. In some cases the subject once important and considered timely, was so no longer, and new questions required new commissions for study and report. The list of commissions was revised—one suppressed, two added, and the necessary changes of membership made. The Institute adjourned Saturday afternoon, the 10th of May, with the intention of meeting in the City of Washington on or about the 1st day of October, 1920. The usual banquet at the close of the session was held, given by Sir Thomas Barclay, at which President Wilson, the guest of honor, delivered an admirable address.

The United States did not ratify the Treaty of Versailles. Therefore, while the Powers which did ratify it were at peace with Germany from the deposit of ratifications on January 10th, 1920, the United States was technically at war. Indeed war has only been ended between the United States and Germany by a separate treaty of peace signed August 25, 1921 and proclaimed September 14, 1921, between the United States and Austria by a treaty

signed August 24, 1921 and proclaimed November 17, 1921, and between the United States and Hungary by a treaty signed August 21, 1921 and proclaimed December 20, 1921. The American members therefore believed it necessary to postpone the proposed meeting in Washington in 1920, and the European members reluctantly concurred in this decision.

The first, and the very great step had been taken for a formal meeting. There was another administrative matter of importance which could be attended to in a special meeting,—the election of members and associates; for the ranks of the Institute had been sadly depleted since the Oxford session. The members of the Bureau, after consultation with the members and associates of the Institute, suggested that a meeting should be held in Paris on the 28th of May, 1921, to elect honorary members, regular members and associates. Elections are regarded as administrative matters, and as such are determined by the members of the Institute, who alone decide matters of administration in administrative meetings. These the associates do not attend, although they take part on a footing of equality in all scientific discussions. As absent members may send their ballots, and as elections of honorary members, members and associates require a majority of those votes of members absent but voting as well as of members present and voting, it is obvious that elections could be held under these circumstances at such a special meeting without prejudicing the rights of members or affecting the prestige of the Institute. Two honorary members were elected:

M. Charles Lyon-Caen, of France, a member and formerly President of the Institute, and, from the outside, Tomasso Tittoni, formerly Ambassador to France and Minister of Foreign Affairs of Italy.

The following members were elected from the associates:

<i>Belgium</i>	<i>Chile</i>
Paul Errera	Alejandro Alvarez
<i>Costa Rica</i>	<i>France</i>
Manuel M. de Peralta	Jean Barthélmi Charles de Boeck
	Albert de Lapradelle
	Alexandre Mérygnac
<i>Germany</i>	<i>Great Britain</i>
Félix Meyer	Sir Sherston Baker
Walther Schuecking	Sir H. Erle Richards
<i>Greece</i>	<i>Italy</i>
Nicolas S. Politis	Dionisio Anzilotti
	Prospero Fedozzi
<i>The Netherlands</i>	<i>Norway</i>
Charles Daniel Asser	Frédéric Waldemar Nicolai Beichmann
<i>Poland</i>	<i>Russia</i>
Comte M. de Rostworowski	André Mandelstam

Spain

Rafaël Conde y Luque
Don Ramon Pina y Millet
Aniceto Sela

Sweden

Carl Louis Axel de Reuterskjöld

Switzerland

Eugène Huber
André Mercier

United States

Elihu Root
George G. Wilson

The following publicists were elected associates:

Argentine Republic

Luis M. Drago

Austria

Hans Sperl

Belgium

Charles de Visscher

Brazil

Rodrigo Octavio de Langgaard Menezes

Chile

S. E. T. Miguel Cruchaga

China

Sintchar Tcheou

Colombia

S. E. Francisco José Urrutia

France

Jules Basdevant
Alphonse Gidel
Louis Erasme Lefur
Ernest Lémonon
Francis Rey

Germany

Hans Wehberg

Great Britain

Thomas Baty
Hugh Bellot
Lord Birkenhead
A. Pearce Higgins
Lord Phillimore
Sir Ernest M. Satow

Italy

Scipione Gemma
Marquis R. Paulucci dé Calboli
Arturo Ricci-Busatti

Japan

Mine-ichiro Adatci
Sakutayo Tachi

Mexico

Francisco León de la Barra

The Netherlands

Bernard C. J. Loder

Norway

Johan Henrik Wallebach

Spain

Joaquin Fernandez Prida

Switzerland

Eugène Borel
Max Huber

United States

Simeon E. Baldwin
Philip Marshall Brown
Frederic R. Coudert
David Jayne Hill
Theodore S. Woolsey

Venezuela

Simon Planas Suarez

The Institute may have but sixty members and sixty associates. The new members elected from the associates at the special session brought the number of members to fifty-eight; the associates elected from the outside brought the number to fifty-eight. Since the date of the special meeting one member, Lord Reay, and one associate, Dr. Drago, have unfortunately died, so that at present there are three vacancies among members and three among associates; that is to say, three associates may be elected members at the next meeting, and three publicists chosen associates, as there are six vacancies in the Institute.

As has been mentioned in the opening sentence of this brief comment, the first regular session of the Institute of International Law since the war was held at Rome, October 3rd-10th, 1921. The attendance was the largest in the history of the Institute. Ninety-three members and associates attended—which the President of the Institute for the Rome session, the Marquis of Corsi, and the Secretary-General, M. Albéric Rolin, attributed to the subvention of twenty thousand dollars which the Carnegie Endowment for International Peace grants the Institute of International Law, the adviser to the Endowment's Division of International Law, in order to cover the expenses incurred by members and associates in attendance at each session of the Institute.

It was not expected, indeed it could hardly have been hoped, that the members and associates, of whom most of the latter attended the session of the Institute for the first time, should adopt projects for which there had not been adequate time for preparation. The Declaration of the *Rights and Duties of Nations*, adopted by the American Institute of International Law at its Washington session in 1917, was the subject of a report by Professor de Lapradelle. As, however, this report was not prepared sufficiently in advance of the meeting to be printed, and was not printed and distributed, the discussion was formal, and this item of the program was very properly referred to the forthcoming meeting of the Institute. In the same connection, the project of the *Union Juridique Internationale*, based upon that of the American Institute, was presented. The two projects will be considered conjointly at the next meeting.

The question of the Permanent Court of International Justice figured in the program, but of the two reporters, Mr. Scott, of the United States, was unable to attend, and Lord Phillimore, of Great Britain, was able to remain in attendance only one day. The question of obligatory jurisdiction of this court, as proposed by the Advisory Committee of Jurists at The Hague in the summer of 1920, was rejected by the Assembly of the League of Nations on December 13, 1920, due chiefly, it is believed, to the opposition of Great Britain and Japan. The question of the jurisdiction of an international Court has occupied the minds of jurists of many countries, and the Advisory Committee meeting at The Hague merely put into acceptable form the consensus of enlightened opinion. The question is largely

one of expediency, and until the "big" Powers are as willing as the "small" Powers to allow their disputes to be settled by principles of justice expressed in rules of law administered by an international court of justice, there will be no difference between the Permanent Court of International Justice and the Permanent Court of Arbitration at The Hague in the matter of jurisdiction. The chief difference, although it is a very great and important one, will be that the Permanent Court of International Justice has a permanent board of judges chosen in advance of and without reference to the cases to be decided, whereas the judges of the so-called Permanent Court of Arbitration are chosen by the parties in issue for particular conflicts and generally after they have broken out.

Recognizing the importance of this subject, the Institute placed it upon the program of its next meeting and appointed as its reporter Philip Marshall Brown, Professor of International Law at Princeton. Other subjects doubtless will be proposed, and the next session of the Institute will be one of discussion and friendly suggestion.

The next session of the Institute will be held in the latter part of August, 1922, under the presidency of André Weiss, member of the Institute of France, Professor of International Law at the University of Paris, member of the Permanent Court of Arbitration at The Hague, member and Vice-President of the Permanent Court of International Justice at The Hague.

Held in the city of Grenoble in the south of France, under such auspices, the next session of the Institute should be a success.

JAMES BROWN SCOTT.

THE TREATY AS TO YAP AND THE MANDATED NORTH PACIFIC ISLANDS

In the July number of this JOURNAL (Vol. 15, pp. 419 to 427) this writer stated somewhat in detail the facts of the dispute as to the "Mandate over Yap." He further briefly submitted some principles of law as well as some authorities, which, in his opinion, fully upheld the attitude of the United States in the matter.

After the lapse of only eight months he is asked to analyze and outline the treaty happily adjusting the matter between the United States and Japan. It was negotiated and signed at Washington on February 11 by Mr. Secretary Hughes for the United States and Baron Shidehara for Japan. It was laid before President Harding by the Secretary of State on the same day and on that date transmitted by the President to the Senate for advice and consent to its ratification. This was duly accorded on March 1 by a vote of 67 to 22.

The document is brief, covering less than four pages. It devotes nearly one and a half pages to a preamble reciting and "considering" the facts. This shows the surrender by Germany under the Treaty of Versailles to "the Principal Allied and Associated Powers" of "all her rights and titles

over her oversea possessions"; that benefits accruing under said Treaty to the United States were confirmed by the Treaty between the United States and Germany of 1921; that the British Empire, France, Italy and Japan had agreed to confer on His Majesty the Emperor of Japan a Mandate over "all the former German islands, situated in the Pacific Ocean and lying north of the Equator." The seven articles of such agreement expressing the terms of such mandate and the rights and obligations of the Mandatory are also recited.

The Treaty adds:

Considering that the United States did not ratify the Treaty of Versailles and did not participate in the agreement respecting the aforesaid mandate; that the United States and Japan desiring to reach a definite understanding with regard to the rights of the two Governments and their respective nationals in the aforesaid islands, and in particular the Island of Yap, have resolved to conclude a convention for that purpose.

By Article I the United States consents to the administration of the said islands by Japan pursuant to the mandate but subject to certain conventions.

By Article II the United States and its nationals are to receive all the benefits of Japan's engagements in Articles 3, 4 and 5 of the Mandate (which require suppression of the slave trade and forced labor, control of traffic in arms and ammunition, and prohibit supplying intoxicating liquor to the natives, limit military training of the natives except for internal police and local defense, forbid establishing military or naval bases or erecting fortifications in these islands, require the mandatory to ensure to the territory freedom of conscience and the free exercise of all forms of worship and that missionaries, nationals of any state member of the League of Nations, shall be allowed to enter into, travel and reside in the territory for the purpose of prosecuting their calling).

Japan further directly in this treaty insures in the islands "complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality," allows American missionaries free right to enter the islands, to travel and reside there, to acquire and possess property, to erect religious buildings and open schools, Japan, however, retaining such control as may be necessary for public order. It may be noted that no express right to transmit property on the part of our nationals in these islands by devise, descent or like means is guaranteed, and like omission appears in the article as to the Island of Yap. The treaty, however, further provides that vested American property rights are to be respected.

Existing treaties between the two powers are applied to these islands. Japan agrees to furnish to the United States a duplicate of her annual report to the Council of the League of Nations and agrees that no modification of the mandate shall affect these conventions, unless expressly assented to by the United States.

As to the Island of Yap, the United States and its nationals are given free access on a footing of entire equality with those of Japan or any other nation in all matters relating to landing or operating the existing Yap-Guam cable or any cable laid or operated by the United States or its nationals connecting with said island. Like rights are extended to radio-telegraphic communication, provided that while Japan maintains thereon an adequate station and cooperates effectively with the cables and other radio stations on ship or shore, without discrimination or preference, the right of the United States or its nationals to establish such station is suspended.

Further, in connection with the above cable and radio rights, nationals of the United States have an unrestricted right to reside in the island and to acquire and hold, on an equality with Japanese nationals or those of any nation, all kinds of property, real or personal. It is observed again that no specific provision for the right to transmit by testament or descent such property interests is expressed. The question suggests itself: What becomes of a house or lot or storehouse on this island on the death of its American owner? Does the right to take and hold, on a parity with citizens of Japan or of any nation, carry the right to transmit on death to heirs, devisees or legatees? Such rights are in the main statutory, generally held not natural rights. It would seem more satisfactory if they had been expressly recognized and assured.

The treaty provides that nationals of the United States can not be required to obtain permits or licenses to land and operate cables or radio-telegraphic service or to enjoy any of the rights stipulated: that "no censorship or supervision shall be exercised over cable or radio messages or operations and the nationals of the United States shall have complete freedom of entry and exit for their persons and property; that no taxes or port, harbor or landing charges shall be levied as to operation of cables or radio stations or as to persons, property or vessels. No discriminating police regulations shall be enforced. Japan agrees to exercise its power of expropriation to get for the United States or its nationals property and facilities for electrical communication, but property of the United States or its nationals is expressly exempt from expropriation.

Earnest efforts were made in the Senate to carry an amendment or reservation making the United States itself the exclusive judge as to whether the government of Japan has maintained radio-telegraphic communication on the Island of Yap as required in the treaty. Senators Underwood and Lodge maintained that to be the true and plain meaning of the treaty proviso and opposed such modification. The attempt was defeated by a vote of 54 to 27. In this discussion, Senator Pittman, who proposed the modification, said: "I do not think for a moment we had any claim on Japan to make concessions in the matter when we refused to take our seat at the table in Paris after we had refused to ratify the treaty of Versailles." This view contravened that expressed by Mr. Secretary Colby for the administration of

President Wilson in his protest of February 22, 1921 to the Council of the League of Nations. That protest insisted that the approval of the United States was essential to the validity of any determination respecting mandates over the territory ceded by Germany. It equally contravenes the opinion of Mr. Secretary Hughes, speaking for the present administration, on April 5, 1921, in reply to the Japanese note. The views of Senator Pittman seem to have met the approval of only a small minority of his fellow Senators.

Public interest has been so centered upon the Four-Power Treaty that this important and gratifying agreement with Japan has commanded but little general attention. It has been mentioned almost exclusively as adumbrating the vote of the Senate by which the Four-Power Treaty might be expected to be ratified. It is, however, it is submitted, a remarkable and complete adjustment of a very troublesome and irritating question arising between ourselves and our imperial *vis-a-vis* on the other side of the Pacific. By skilful draftsmanship, the agreement imposes no humiliating repudiations upon Japan, but "desiring to reach a definite understanding with regard to the rights of the two governments and their respective nationals in the aforesaid islands," the plenipotentiaries proceeded to effect what was desired. Mr. Hughes is to be congratulated in that the treaty accords all that he or his predecessor claimed for this country, or its nationals, in the premises.

As Mr. Albert W. Fox, in the *Washington Post* of March 2, 1922, the day after the final action by the Senate, said: "The ratification of the Yap treaty is important in this sense, that it ends a controversy with Japan by obtaining for the United States and its nationals such rights, relating to cables and radio communication, as have been contended for by the preceding and present administration." It is difficult to see how any Secretary for Foreign Affairs could do more or could do better.

The attitude of the Island Empire and its honored Ambassador was most admirable, the achievement for our own country complete and satisfactory. Mr. Hughes has shown with what promptness and adequacy international disputes can be solved when they are placed in the hands of an able, resourceful, straightforward and courageous lawyer, eager for the rights of his own country, but entirely just to those of others. He is entitled to, and enjoys, the gratitude of all who desire to see the good relations of mankind assured by wise and firm negotiations consummated by just agreements tainted by no enduring bitterness and endangered by the exaction of no humiliations.

CHARLES NOBLE GREGORY.

THE DEPARTMENT OF STATE ON THE AMERICAN FLOTATION OF FOREIGN PUBLIC LOANS

The Department of State, on March 3, 1922, made announcement of its policy of requesting of American bankers information concerning the terms of prospective foreign public loans to be negotiated and underwritten by them.

As the desirability of governmental cooperation had not appeared to be well understood in banking and investment circles, the official explanation was illuminating and reassuring.

It was declared that the flotation of foreign bond issues in the American market was assuming an increasing importance, and that "on account of the bearing of such operations upon the proper conduct of affairs" it was hoped that American concerns contemplating the making of foreign loans would inform the Department of State in due time of the essential facts and of subsequent developments of importance. Responsible American bankers would, it was said, be competent to determine what information should be furnished and when it should be supplied. It was announced that American concerns wishing to ascertain the attitude of the Department regarding any projected loan should request of the Secretary of State in writing, an expression of the Department's views. Assurance was given that the Department would then take the matter under consideration, and, in the light of the information in its possession, endeavor to say whether objection to the loan in question did or did not exist. The point was, however, emphasized that even though the Department might have been informed, silence on its part would not indicate either acquiescence or objection.

It was added that the Department could not, of course, require American bankers to consult it; and that it would not undertake to pass upon the merits of foreign loans as business propositions, nor assume any responsibility whatever in connection with loan transactions. Offers for such loans should not, therefore, it was declared, state or imply that they were contingent upon an expression of opinion regarding them; nor should any prospectus or contract refer to the attitude of the Government. Finally, the belief was expressed that "in view of the possible national interests involved," the Department should have the opportunity of saying to the underwriters concerned, should it appear desirable to do so, that there was or was not objection to any particular issue.

The reasonableness of the general policy thus announced ought to be apparent. It is due to the international and essentially public character of agreements providing for the flotation of foreign public bonds in America, and to the direct effect of such transactions upon both the economic and political relations of the United States with the governmental borrowers.

In giving fresh heed to such considerations the Department of State is following, somewhat conservatively, the avowed policies of numerous foreign States whose bankers have had funds available for foreign investment. It is understood that the governments, for example, of Great Britain, France, Germany and Japan, have always worked in cooperation with their respective bankers, influencing both the direction and nature of foreign loans, and oftentimes the terms of arrangements and the character of security. With respect to loans to certain States, particularly to those of neighboring countries under the wardship of the United States for purposes of financial

rehabilitation or otherwise, such as Cuba, Haiti, Nicaragua and the Dominican Republic, the Department of State has long exercised a large and perhaps decisive influence of incalculable benefit to American lenders. In at least one instance, a bond agreement has made definite reference of the absence of objection to the arrangement on the part of the Secretary of State to whom the document was submitted.¹ On another occasion, the prospective American lender has conditioned its flotation of bonds upon the acceptance by the borrower of the terms of a particular convention with the United States establishing the basis of protection.² The China Consortium Agreement of October 15, 1920, and the relation of the Department of State thereto, during the régimes of opposing political administrations, have revealed the closeness of the working arrangement that may under certain conditions be effected between the United States and American bankers.³

The full significance of American governmental cooperation deserves consideration. To the lender, the known approval of its government is of distinct value because of the removal of possible obstacles which might otherwise supervene should the lender have cause to request diplomatic interposition, and because also of the salutary effect upon the mind of the borrower of entire harmony between the lender and its government. The favorable effect of that harmony upon the mind also of the American investor may be considerable. For that reason it is believed that when such a relationship does in fact exist, the lender may well be permitted to make formal announcement of it, and perhaps beyond the limitations contemplated by the Department of State in its cautious declaration of policy.

Real cooperation between the Department of State and American lenders ought to be productive of something more. It should, for example, serve to aid the lender in ascertaining the nature and extent of requirements essential to the validity of the transaction according to the local laws and institutions of the borrower, and to give warning when those requirements are not met. It should place within the reach of the banker fresh counsel as to the desirability or need of security, and as to the kind of security to be demanded of a particular applicant, as well as the means to be employed for its utilization. Necessary safeguards should be suggested and needless impediments discouraged. Thus the Government might well bring home to the attention of prospective lenders the insufficiency of pledges or hypothecations of assets not surrendered to the control of the lender or of an agency in its behalf. It might emphasize the impotence of a lender as against a foreign public

¹ See Art. X of Bond and Fiscal Trust Agency Agreement between the Republic of Nicaragua and certain bankers; Oct. 5, 1920.

² Such was the attitude of certain American bankers in 1911, in negotiations with the Republic of Honduras. See in this connection U. S. Foreign Relations, 1912, p. 587.

³ For the text of the agreement, see this JOURNAL (Jan. 1922), Vol. XVI, Official Documents, p. 4. See also Geo. A. Finch, "American Diplomacy and the Financing of China," *id.*, XVI, 25.

borrower retaining in its grasp the asset employed to induce credit. With its close knowledge of the fiscal, political and economic conditions confronting every foreign public applicant for a loan, the Department of State might unhesitatingly inform a prospective lender of the probable effect of certain forms of security upon the stability of the borrower from which they were exacted. Thus it might, for example, in a particular case, question the wisdom of demanding of a borrower constituting an independent State not under the protection of the United States (and not subjected to a régime of extraterritorial jurisdiction) pledges of customs revenues to be relinquished to an alien trustee.⁴ Should the borrower be called upon to surrender by way of security or for the purpose of utilizing security, the exercise of privileges locally deemed to be incapable of delegation to a foreign entity, the danger of the transaction, however valid, should be made known. The effect of terms likely to be challenged by enlightened opinion as subversive of the sovereignty of the borrower upon the popular mind throughout its domain should be made clear. Arrangements likely to beget hostility towards the United States and resentfulness in relation to American investors should be pictured in their true colors. In a word, governmental cooperation should serve to emphasize precautions to be taken, risks to be guarded against, forms of security to be avoided, pitfalls to be shunned, as well as safeguards to be demanded. Under scientific and persistent and friendly development, the coordinated labors of the Department of State and American lenders to foreign governments are capable of safeguarding the interests of American investors, enhancing the ultimate success of American loans, and simultaneously of advancing in the best sense the cause of American diplomacy by eliminating obstacles otherwise bound to impede its progress.

CHARLES CHENEY HYDE.

THE CLASSIFICATION OF JUSTICIABLE DISPUTES

There was considerable discussion at the annual session of the Institute of International Law in Rome last October concerning the jurisdiction of the Permanent Court of International Justice provided for by Article XIV of the Covenant of the League of Nations. This discussion centered around the wording of Article 36 of the Statute of the Court adopted by the Assembly of the League of Nations at Geneva on December 13, 1920. The text of this Article reads as follows:

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force.

The Members of the League of Nations and the States mentioned in the Annex of the Covenant may, either when signing or ratifying the protocol

⁴ It is not suggested that such terms might not, under entirely different circumstances, be justly exacted as a necessary safeguard for the lender and without jeopardizing the validity or ultimate success of the loan.

to which the present Statute is adjoined, or at a later moment, declare that they recognise as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

- (a) The interpretation of a Treaty;
- (b) Any question of International Law;
- (c) The existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) The nature or extent of the reparation to be made for the breach of an international obligation.

The declaration referred to above may be unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

It will be observed that by the first paragraph of Article 36 the jurisdiction of the Court is most comprehensive so far as it concerns disputes which the parties may voluntarily refer to it.

As concerns the compulsory jurisdiction of the Court the attempt made to classify legal disputes can hardly be said to be satisfactory. "Any question of international law" is obviously all-inclusive in scope, as also "the existence of any fact which if established would constitute a breach of international obligation."

It is not at all strange, therefore, that only a few of the smaller powers thus far have accepted the compulsory jurisdiction of the Court. Nations having large interests at stake cannot afford to do so unless there is a very explicit and complete agreement as to what disputes are considered to be legal or justiciable in character. By the very nature of things a true court of justice implies the right to summon the parties subject to its jurisdiction to appear before the Court. The question then of the classification of legal disputes becomes of fundamental importance. It was for these reasons that the Institute of International Law at its last session designated a special Commission for the study of the question of The Classification of International Disputes of a Justiciable Nature.

It should not be forgotten that various attempts have been made to classify justiciable disputes, notably by the Sub-Commission of the Hague Peace Conference of 1907. In fact, very considerable progress was made in this direction and a large majority agreed upon a long list of concrete subjects in which the contracting nations expressly renounced the classic reservation of "honor, independence, vital interests, etc." The unanimity rule, however, prevented the adoption of this list. The jurisdiction of the Permanent Court of Arbitration was consequently left voluntary and included a wide range of disputes.

In view of the failure of the Hague Conference of 1907 to agree upon a classification of justiciable disputes, the Commission of Jurists appointed by

the League of Nations felt constrained to avoid what seemed to be another futile attempt and therefore agreed upon the general and vague phraseology of Article 36 already quoted.

Attention should also be called to the fact that the term "justiciable" was first employed in a formal international document when the United States sought to negotiate in 1911, under the Administration of President Taft, general arbitration treaties with Great Britain and France. These treaties contained a clause accepting arbitration in the case of differences "which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law and equity." It was unfortunate that the definition of justiciable should have included the term "*equity*." There is no general agreement among nations concerning principles of equity. As employed in English it is either very vague and general in significance or it refers to the system of equity applied in English and American courts of law. In either case it does not serve to clarify the meaning of "justiciable."

Reduced to its simplest terms the word justiciable as employed either in English or in French would seem to apply to all disputes which—to use the definition of the Century Dictionary—"are proper to be brought before a court of justice or to be judicially disposed of." It is therefore to be restricted in its application, and should not for any general purpose be applied to *all* international controversies. Both from the juristic and political standpoints, the utmost precision of definition of those disputes which properly may be brought before a court of justice is desirable.

Certain difficulties in the way of the classification of justiciable disputes must be acknowledged at the outset. The first great difficulty is that of distinguishing between justiciable disputes and those controversies of a political character affecting "independence, vital interests, honor, etc." Experience has shown that there is hardly any international dispute, even though of the most innocent appearance, which may not be deemed at a given moment to involve a political consideration. Among these are matters of an economic character or relating to the general intercourse of nations. As an illustration, an international agreement concerning the exchange or return of freight cars would hardly be a justiciable question at a moment of high tension between the parties concerned when such cars might be required for purposes of mobilization.

Baron Marschall von Bieberstein in the course of the discussions of the Sub-commission above referred to laid great emphasis on this difficulty, which, in his mind, seemed to preclude in large measure any attempt to classify justiciable disputes. Another German, however, Doctor Hans Wehberg, has pointed out the reverse side of the question: namely, that in every political dispute it is possible to extract what he well terms "the legal core." From the purely juristic point of view then the problem becomes, not one as to what categories of disputes certain nations may be unwilling to submit to a court of justice, but one of determining in a dispassionate, scientific

manner what questions may be said to be justiciable in character, that is to say, "proper to be brought before a court of justice or to be judicially disposed of." Once such a legal classification is agreed upon, it is to be hoped that in the process of time all nations may find it compatible with their own national interests as well as those of international justice to submit without any reservation whatever all disputes of a justiciable nature to the Court of International Justice.

A second, and a very serious, difficulty in the way of classification is the fact that in a considerable number of controversies there does not exist a general agreement as to the principles of law to be applied. It cannot be denied that international law is in a relatively backward state of development in certain fields. For example, in disputes concerning the rights of aliens to damages because of the acts of states, or in the case of contracts and concessions, or international loans, it might be difficult for a court of justice to enunciate the principles of law which should apply. There is no international law of torts or of bankruptcy.

Furthermore, it may be seriously questioned either from the point of view of principles or of expediency whether nations would be willing to grant to the Court of International Justice the right to legislate judicially. The law of nations would seem by its very nature and the history of its development to be a system requiring positive assent. It is not a system to be imposed either by a sovereign executive or a court of justice.

For these reasons, therefore, the task of classification of justiciable disputes may be rendered more difficult in certain categories. But in those cases where it might appear possible to obtain a general agreement on the legal principles to be applied, this might be accomplished through international conferences and commissions. This was clearly recognized by the Commission of Jurists in its wise recommendation for conferences on international law. It is greatly to be regretted that the recommendation did not appear to have been appreciated at its full value by the League of Nations. It is certainly of the utmost importance in connection with the problem of classification.

A third difficulty in the way of classification has appeared to some minds to consist in the necessity of creating special courts for the decision of highly technical matters, particularly in regions where local customs and conventions are to be interpreted. This might well be the case in many questions affecting the interests of the nations of the American continent. This would not appear to be a serious difficulty, however, inasmuch as, from the juristic point of view, the task still remains one of determining the list of disputes which may strictly be said to be justiciable in character. As in the case of political disputes, this need of special tribunals for controversies of a special nature is one of method, not one of principle.

A fourth difficulty is that a classification of justiciable disputes would virtually amount to a codification of international law. Unquestionably the

most satisfactory classification should be precise and definite. To attempt to enumerate all of the various rights of action and the remedies provided under international law would certainly be of the nature of codification.

The objection to codification would appear to be based on the assumption that a code must necessarily be *complete*, that is to say, a well-balanced system of law in which provision is made for all reasonable contingencies.

If we view codification, however, not as a complete system, but as an evolution,—an orderly development of law through common consent,—classification would appear to be entirely logical and desirable, if it be made perfectly clear that it is not intended to be *exclusive* in scope. It would necessarily contemplate the progressive enlargement of the list as rapidly as the growth of the law of nations would permit, especially in those fields where it might be possible through international conferences to formulate the principles of law which should apply, as in the case of international torts and bankruptcy.

Viewed in this light, as a "*progressive* codification" of international law, which takes into account the necessity of providing for its deficiencies from time to time, classification would not seem open to serious objection. Even though it be impossible always to be precise in details, the definition of general categories of justiciable disputes would undoubtedly prove a great help in the evolution of justice among nations.

Having considered the various difficulties in the way of the classification of justiciable disputes one is tempted to ask if the better method would not be to attempt to classify *political* disputes as being essentially the *exceptions* in the intercourse of nations. Would it not be more feasible to state as a general principle that the jurisdiction of the Court of International Justice would extend to all questions of a justiciable nature and would exempt only those controversies involving political considerations of such moment as to preclude a judicial decision? Would it not be possible to agree first of all on a limited list of political disputes such as, for example, the interpretation of a treaty of alliance; and secondly, to provide for an impartial determination whether in certain instances international controversies should be referred either to mediation, conciliation or to arbitration?

In the present stage of development of international society, it certainly does not appear that nations have yet achieved that degree of harmony of standards of moral right or of legal principles to warrant their acceptance of any common sovereign executive, legislature, or judiciary. It cannot be too insistently emphasized that the political evolution of international society is through the laborious process of education and of common consent. For these reasons there must necessarily continue to exist many disputes primarily justiciable in character, that is to say, having a "legal core" rendering them proper for decision by a court of justice; but which at the same time unquestionably involve grave political considerations. It is therefore a fair question whether the problem of the classification of international con-

troversies might not more profitably be approached from the political side. Instead of attempting a strictly legal classification which would virtually amount to codification, the task would be in a large measure simplified. It would become one rather of providing the means, the machinery for deciding in a given case whether the political considerations at stake would exclude a purely judicial decision, and demand adjustment either through diplomacy or arbitration.

We face here a fact of the utmost importance concerning the competency as well as the prestige of the Court of International Justice. We should not forget that this Court owes its creation primarily to the need and to the demand for an administration of international justice entirely dissociated from diplomatic jugglery or arbitral compromise. The respect and confidence which this new Court should inspire will depend largely on the manner in which it courageously refuses to become involved in the political disputes of nations. The Court unquestionably will be called on, under the vague general terms of Article 36 defining its competency, to decide whether certain of the disputes submitted are not essentially political in character and hence not "proper to be brought before a court of justice."

The refusal of the Court of International Justice to entertain various disputes involving political considerations would not result in any injury to the nations concerned inasmuch as there already exists the much older institution of the Permanent Court of Arbitration at The Hague, whose function, and in fact, whose *raison d'être* alongside of the new Court of International Justice should be the decision of disputes involving considerations *not* entirely justiciable in their character. Nothing could be more dangerous to the whole cause of justice amongst nations than to attempt to burden the new Court of International Justice with "all cases which the parties refer to it." Nothing would appear to be more favorable to this cause than the existence of courts of arbitration and of other means of adjustment and conciliation to provide for a peaceful decision of those special questions which are outside of the competency of a pure court of justice.

By way of summary, then, this problem of the classification of international disputes of a justiciable nature, while primarily a juristic problem, would appear to be involved essentially in the consideration of the actual status of international society. There would seem to exist serious grounds for doubting whether it would be possible to attempt a classification of a purely scientific character which would not have more of an academic value than a practical significance. May we not be compelled, after all, to approach this task from the political end and try by a process of elimination, that is to say, by dealing with the exceptions rather than with the rule, to finally arrive at the desired goal, namely the free untrammelled administration of international justice?

PHILIP MARSHALL BROWN.

"AS IF FOR AN ACT OF PIRACY"

The treaty concluded between the United States, the British Empire, France, Italy and Japan at the Washington Conference on February 6, 1922, which imposes limitations upon the use of submarines as commerce destroyers in war and is generally known as the Declaration of Washington, provides in Article III as follows:

The Signatory Powers, desiring to insure the enforcement of the humane rules of existing law declared by them with respect to attacks upon and the seizure and destruction of merchant ships, further declare that any person in the service of any Power who shall violate any of those rules, whether or not such person is under orders of a governmental superior, shall be deemed to have violated the laws of war and shall be liable to trial and punishment as if for an act of piracy, and may be brought to trial before the civil or military authorities of any Power within the jurisdiction of which he may be found.

The rules referred to are stated in Article I of the treaty as follows:

The Signatory Powers declare that among the rules adopted by civilized nations for the protection of the lives of neutrals and noncombatants at sea in time of war, the following are to be deemed an established part of international law;

(1) A merchant vessel must be ordered to submit to visit and search to determine its character before it can be seized.

A merchant vessel must not be attacked unless it refuse to submit to visit and search after warning, or to proceed as directed after seizure.

A merchant vessel must not be destroyed unless the crew and passengers have been first placed in safety.

(2) Belligerent submarines are not under any circumstances exempt from the universal rules above stated; and if a submarine can not capture a merchant vessel in conformity with these rules the existing law of nations requires it to desist from attack and from seizure and to permit the merchant vessel to proceed unmolested.

It appears from the published records of the Conference that in the discussion among the representatives of these five Powers as to the declaration that a violation of these laws of war would be punished "as if for an act of piracy," assent was given to the following propositions as the legal basis of this declaration: that the rules, the violation of which is to be punished as for an act of piracy, are rules of the existing laws of war; that the five Powers represented are competent to make a declaration characterizing a violation of the existing laws of war as a crime which would subject the violator to punishment; that they are competent to declare that those who violate the laws of war are punishable as for acts of piracy; that as they were not making law, but a declaration regarding existing law, no limitation of its application to the Powers represented was necessary.

They also assented to the following limitations upon their powers: that it would not be competent for them to make an agreement between themselves which would have the effect of a law of nations, upon which they could pronounce a punishment as for piracy; that for this reason the punishment as for piracy could not be applied by this treaty to violations of the new rule

adopted in Article IV prohibiting the use of submarines as commerce destroyers; that until this rule passed beyond the contractual state and became an accepted rule of international law, they are constrained to limit their enforcement of it to their contractual obligations as between themselves.

With reference to the phrase "punishment as if for an act of piracy," its meaning was stated to be that a violation of the laws of war therein specified should be punished as an act of piracy is punished. It was further stated that under this provision the offender would not be subject to the limitations of territorial jurisdiction, the peculiarity about the punishment for piracy being that, although the act is done on the high seas and not within the jurisdiction of any country, nevertheless it can be punished in any country where the offender is found.

In the United States, Congress is empowered by the Constitution "to define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations." Many treaty stipulations dealing with matters entrusted to Congress under the Constitution have been held to be self-executing without legislative action, although it has sometimes been the practice in similar cases for Congress to enact appropriate legislation for carrying out treaty stipulations.¹

The purpose of the treaty, so far as these provisions are concerned, is stated in the preamble to be "to make more effective the rules adopted by civilized nations for the protection of the lives of neutrals and noncombatants at sea in time of war." It is of interest to note that the provisions above quoted apply not merely to submarines but to surface ships of war as well when used as commerce destroyers, and as indicated by the preamble it is inspired by humane sentiments for the protection of lives rather than by the mere utilitarian purpose of protecting property, no mention of which is made in the treaty.

CHANDLER P. ANDERSON.

THE NOBEL PEACE PRIZE FOR 1921

The Nobel Peace Prize of approximately forty thousand dollars was intended to be awarded every year, and has been, with the exception of 1914, 1915, 1916 and 1918.

Usually the prize has been to one individual or has been divided between two candidates. On three occasions it was granted to institutions: in 1904, to the Institute of International Law, in 1910 to the Permanent International Peace Bureau of Berne, and in 1917 to the International Red Cross of Geneva.

In the year 1921 (on December 10th, to be accurate) the peace prize for 1921 was awarded, one half to Karl Hjalmar Branting, Prime Minister of Sweden, and one half to Christian Lous Lange of Norway, Secretary-General of the Interparliamentary Union. The award is made in Christiania by a committee of five members elected by the Norwegian Storting, "to the

¹Extent and Limitation of the Treaty-Making Power, by Chandler P. Anderson, *American Journal of International Law*. July, 1907.

person who shall have done most or the best work in the interest of the brotherhood of peoples, of the abolition or reduction of standing armies, as well as of the formation and propagation of peace congresses."

Both of the recipients qualified under one if not more of the three subdivisions.

Mr. Branting was born at Stockholm on November 23, 1860. He is a journalist by profession and was for thirty years editor of the *Social Democrat* (1887-1917), until his appointment as Minister of Finance in October, 1917. In March, 1920, he became Prime Minister of Sweden, serving until December of that year. After the elections in the fall of 1921, which were favorable to the Socialists, he again became Prime Minister (October 11th), which post he still holds. In 1920 and in 1921, at the first and second sessions of the League of Nations held in Geneva, he was chairman of the Committee on Disarmament in the Assembly, and in March of last year he was appointed a member of the Commission on Disarmament appointed by the Council of the League, of which Mr. René Viviani of France was chairman.

Mr. Branting is in fact as well as in title the leader of the Social Democratic Party in Sweden, and has been very prominent in the international gatherings of Socialists. He is, of course, an advocate of the League of Nations, and during the Peace Conference in Paris he was a strenuous advocate of peace on the lines of President Wilson's "fourteen points." He has been a prolific writer as well as an agitator, some of his publications being *Socialism* (1892), *Military Riksdag vs. Folksriksdag* (1892), *Social Democracy's Century* (1896), *The Political Crisis* (1914), *Against the Personal Monarchies* (1914), *The Laboring Class and the World Situation* (1915), *The Waves Rise* (1917).

Mr. Lange was born at Stavanger, Norway, on September 17, 1869. He was Secretary of the Nobel Committee in the Storting from 1900 until 1909. He represented Norway at the Second Hague Peace Conference of 1907, distinguishing himself by his advocacy of arbitration. Since July 1, 1909, he has been Secretary-General of the Interparliamentary Union.

Mr. Lange is an apostle of peace. It is the serious mission of his life. He has brought his native and highly trained intelligence to its advancement, and he has brushed aside worldly honors. Among others, it may be mentioned that he refused no less a post than the Ministry of Foreign Affairs of his native country, as its acceptance would have interfered with his peace work.

He is an admirable linguist, speaking French and German as if they were his mother-tongue, and in his English there is no trace of the foreigner.

Mr. Lange has a very facile pen as well as a supple tongue. Among his many works one is a masterpiece. It is *The History of Internationalism* [*Histoire de l'Internationalisme*], the first volume of which, ending with the Peace of Westphalia of 1648, appeared in 1919. The second will continue the history from 1648 to 1815, and will, Mr. Lange assures us, appear shortly. The third and concluding volume will carry the narrative from 1815 to the present day.

This great work, written by Mr. Lange in French, is a tribute to French as the international language *par excellence*. It is a monument to the peace movement. It is a monument to the author.

In his last will and testament creating the five prizes, of which the peace prize is one, Mr. Alfred Nobel stated it to be his "express will that nationality shall not be taken into account in conferring the prizes, so that the prize may go to the most deserving, whether he be a Scandinavian or not." The Peace Prize for the year 1921 has been worthily bestowed, and to Scandinavians.

JAMES BROWN SCOTT.

PROPOSED AMENDMENTS TO THE COVENANT OF THE LEAGUE OF NATIONS

The Second Assembly of the League of Nations, on October 3-5, 1921, passed a number of resolutions amending the Covenant of the League.¹ The amendments deal with the election of non-permanent members of the Council of the League, the allocation of the expenses of the League, recognize judicial settlement as a means of settling international disputes and fit the Permanent Court of International Justice into the scheme of the League, modify the existing provisions concerning the use of force and economic pressure, and change the method of amending the Covenant.

The Council of the League consists of "representatives of the Principal Allied and Associated Powers, together with representatives of four other members of the League. These four members of the League," Article 4 provides, "shall be elected by the Assembly from time to time in its discretion."² The Assembly now proposes to insert the following paragraph between the second and third paragraphs of Article 4:

The Assembly shall fix by a two-thirds majority the rules dealing with the election of the non-permanent Members of the Council, and particularly such regulations as relate to their term of office and the conditions of re-eligibility.

The allocation of the expenses of the League is provided for in Article 6 of the Covenant, the last paragraph of which reads that "the expenses of the Secretariat shall be borne by the members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union," and in the section of the peace treaties dealing with the International Labor Organization, under which all expenses of that organization "shall be paid to the Director by the Secretary-General of the League of Nations out of the general funds of the League," except

¹ *League of Nations Official Journal*, January, 1922, pages 6-34.

² The text of the Covenant of the League of Nations, which is referred to in this comment, may be found in the *Official Journal of the League of Nations*, No. 1, February, 1920, pages 3-12. It is printed in the Supplement to the *American Journal of International Law*, Vol. 15, 1921, pp. 4-13.

traveling expenses of the delegates and advisers in attending meetings of the Conference or Governing Body.³ The Assembly is, however, "of the opinion that the application of the Universal Postal Union system to the budget of the League gave rise to certain injustices" and it proposes that the above quoted paragraph of Article 6 of the Covenant be replaced by the following: "The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly"; and a revised allocation has been made by the Assembly which it proposes as an amendment to the Annex to the Covenant. The Assembly further proposes to add a new paragraph to Article 6 providing that "the allocation of the expenses of the League set out on Annex 3 shall be applied as from January 1, 1922 until a revised allocation has come into force after adoption by the Assembly."

A memorandum by the Secretary-General of the League, dated November 15, 1921, explains that:

The Second Assembly, on October 3rd, 1921, unanimously passed the budget of the League of Nations for the fourth fiscal period (1922), which provides 14,738,335 gold francs for general League purposes and 6,135,610 gold francs for the International Labour Organisation. The total sum to be apportioned among the States Members of the League amounts, therefore, to 20,873,945 gold francs.

Previous contributions have, in accordance with Article 6 of the Covenant, been reckoned according to the apportionment of the expenses of the International Bureau of the Universal Postal Union, and this system, until the amendment proposed by the Second Assembly has been ratified, necessarily continues in force.⁴

The table on page 265 shows the apportionment of the budget of the League, for the fiscal period 1922, among the Members of the League on the basis of the new schedule adopted by the Assembly. For purposes of comparison we insert an additional column showing the apportionment of the same budget according to the old schedule, that is, on the basis of the apportionment of the Universal Postal Union, as now provided in the Covenant.

The next three amendments proposed by the Assembly are made necessary by the establishment of the Permanent Court of International Justice under Article 14 of the Covenant. It has been known from the beginning by some of those who were present at Paris that judicial settlement of international disputes formed no part of the plans of the originators and sponsors of the League. The Covenant centers around political, not legal, action. A reading of the Covenant discloses that Article 14, which provides for the establishment of the Permanent Court of International Justice, was not within the contemplation of the framers when the other articles of the Covenant were drawn.

³ Art. 399 of the Peace Treaty with Germany, Supplement to this *Journal*, Vol. 13, 1919, p. 365, and Art. 327 of the Peace Treaty with Hungary, *ibid.*, Vol. 15, 1921, p. 137.

⁴ *League of Nations Official Journal*, January, 1922, p. 32.

Allocation of the expenses of the League

	Units payable		Budget for the fiscal period 1922 (Gold francs, \$.193)	
	Old Schedule	New Schedule	Old Schedule	New Schedule
Albania.....	1	2	40,453	44,318
Argentine Republic ^a				
Australia.....	25	15	1,011,335	332,388
Austria.....	5	2	202,267	44,318
Belgium.....	15	15	606,801	332,388
Bolivia.....	3	5	121,360	110,796
Brasil.....	15	35	606,801	775,571
British Empire.....	25	90	1,011,335	1,994,326
Bulgaria.....	5	10	202,267	221,592
Canada.....	25	35	1,011,335	775,571
Chile.....	5	15	202,267	332,388
China.....	25	65	1,011,335	1,440,347
Colombia.....	5	10	202,267	221,592
Costa Rica.....	3	2	121,360	44,318
Cuba.....	3	10	121,360	221,592
Czecho-Slovakia.....	15	35	606,801	775,571
Denmark.....	10	10	404,533	221,592
Estonia ^b	3	5	121,360	110,796
Finland.....	10	5	404,533	110,796
France.....	25	90	1,011,335	1,994,326
Greece.....	5	10	202,267	221,592
Guatemala.....	3	2	121,360	44,318
Haiti.....	3	5	121,360	110,796
Honduras.....	3	2	121,360	44,318
India.....	25	65	1,011,335	1,440,347
Italy.....	25	65	1,011,335	1,440,347
Japan.....	25	65	1,011,335	1,440,347
Latvia.....	5	5	202,267	110,796
Liberia.....	1	2	40,453	44,318
Lithuania ^c	3	5	121,360	110,796
Luxemburg.....	3	2	121,360	44,318
Netherlands.....	15	15	606,801	332,388
New Zealand.....	3	10	121,360	221,592
Nicaragua.....	3	2	121,360	44,318
Norway.....	10	10	404,533	221,592
Panama.....	3	2	121,360	44,318
Paraguay.....	3	2	121,360	44,318
Peru.....	3	10	121,360	221,592
Poland.....	5	10	202,267	221,592
Portugal.....	25	15	1,011,335	332,388
Romania.....	10	10	404,533	221,592
Roumania.....	15	35	606,801	775,571
Salvador.....	3	2	121,360	44,318
Serb-Croat-Slovene State.....	10	35	404,533	775,571
Siam.....	3	10	121,360	221,592
South Africa.....	25	15	1,011,335	332,388
Spain.....	20	35	809,068	775,571
Sweden.....	15	15	606,801	332,388
Switzerland.....	15	10	606,801	221,592
Uruguay.....	3	10	121,360	221,592
Venezuela.....	3	5	121,360	110,796
Totals.....	516	942	20,873,945	20,873,945
Unit of Calculation.....			40,453.38	22,159.18

^a Owing to the failure of the Argentine Republic to send contributions to the budget of the League, that member is not included by the Secretariat in the calculations of either schedule.

^b Estonia, not having been as yet classified by the Universal Postal Union, is here placed in the sixth category and rated at 3 units.

^c Lithuania, not having been as yet classified by the Universal Postal Union, is here placed in the sixth category and rated at 3 units.

The wording of Articles 12 to 16, inclusive, bears plain evidence of the exotic origin of Article 14. Article 12, which is quoted below, it will be noted, makes no mention of judicial settlement or of an International Court of Justice when making provision for the settlement of international disputes. It refers only "to arbitration or to inquiry by the Council." Article 13 deals

only with arbitration and defines as "suitable for submission to arbitration" the identical classes of cases which have now been recognized in the Statute for the Permanent Court of International Justice as coming within the jurisdiction of that Court. Article 13 specifies the court which shall consider such legal disputes, not, however, pointing to the Permanent Court of International Justice, but by providing that "the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention between them," thereby entirely ignoring the existence of the Permanent Court of International Justice provided for in Article 14 inserted immediately thereafter.

Article 15, which immediately follows the Article providing for the Permanent Court of International Justice, also plainly ignores that tribunal. It provides that "if there should arise between the members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with Article 13, the members of the League agree that they will submit the matter to the Council."

Article 16 also continues to ignore resort to the Permanent Court of International Justice. Its opening sentence reads: "Should any member of the League resort to war in disregard of its covenants under Articles 12, 13, or 15, it shall *ipso facto* be deemed to have committed an act of war against all the other members of the League, etc.," thus again omitting mention of Article 14.

The creation of the Permanent Court of International Justice is, in the words of Sir Eric Drummond, Secretary-General of the League, "clearly the greatest and will, I believe, be the most important creative act of the League. At last a judicial body is established which is entirely free from all political control and entirely unfettered as to its decisions by political bodies. Although it derives its authority from the League, its judgments are in no way subject to advice or revision by the Council or by the Assembly."⁶ But, owing to the circumstances above set forth under which the provision for the Court was inserted in the Covenant of the League, it is now naturally necessary to recognize the Court in articles other than Article 14 in order, so to speak, to legalize the adoption of the foster child and make the Court the judicial organ of the League. The Assembly, therefore, proposes to modify Articles 12, 13 and 15 as follows (the amendments being inserted in *italic*):

ARTICLE 12

The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or *judicial settlement* or to enquiry by the Council and they agree in no case to resort to war until three months after the award by the arbitrators or *the judicial decision*, or the report by the Council.

⁶ *Monthly Summary of the League of Nations*, February, 1922, p. 27.

In any case under this Article the award of the arbitrators *or the judicial decision* shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute."

ARTICLE 13

The Members of the League agree that, whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration *or judicial settlement*, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration *or judicial settlement*.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration *or judicial settlement*.

*For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.**

The Members of the League agree that they will carry out in full good faith any award *or decision* that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award *or decision*, the Council shall propose what steps should be taken to give effect thereto.

ARTICLE 15

The first paragraph of Article 15 shall read as follows:

If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration *or judicial settlement* in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

Anent the antecedents of the Permanent Court of International Justice and the origin of the provision for it in the Covenant of the League of Nations, the following extract from an address delivered by Senator Cosme de la Torriente before the Cuban Society of International Law, at Havana, on March 1, 1922, is of timely interest:

I would not be fully discharging my duty—a duty which I have gladly accepted—of addressing you this evening if I did not dwell, although very briefly, upon the origin of the Permanent Court and the law upon

* This paragraph is inserted in lieu of the original paragraph which read:

"For the consideration of any such dispute the court of arbitration to which the case is referred, shall be the court agreed on by the parties to the dispute or stipulated in any convention between them."

which it is founded. I must confine my remarks upon this subject to a narrow compass because there is here a number of distinguished members of our Society who will surely discourse, in the coming sessions, upon the organization and functioning of the said tribunal.

The Hague Conferences of 1899 and 1907 drew up a convention for the pacific settlement of international disputes, and created, at the same time, the so-called Permanent Court of Arbitration. The members of this court are not to exceed four in number for each of the signatory and adhering Powers to the convention; and with the names of the members thus chosen, a list is made from which the parties in controversy select the judges who are to compose the court for the decision of the question or questions which the parties have agreed to submit to arbitration.

At the time of the Hague Conference of 1907, the necessity was felt of creating a really permanent court of arbitral justice which should be composed of a limited number of judges, whose decisions should be grounded upon the rules and principles of international law and treaties. The American Delegation to the Conference of 1907, following the instructions of the Secretary of State, Elihu Root, proposed the creation of a Court of Arbitral Justice, and the Conference recommended to the signatory Powers of the Final Act the adoption of a draft convention which was to be put into force as soon as an agreement could be had upon the manner of selecting the judges and the composition of the court.

At the time of the meeting of the Naval Conference of London, in the latter part of 1908 and beginning of 1909, the American Secretary of State, then Mr. Robert Bacon, endeavored, through the American Delegation, to have the Powers concerned examine, for a second time, the creation of the Court of Arbitral Justice, and in March, 1909, he addressed, upon this matter, the Powers represented in the said Conference. In October of the same year, Philander C. Knox, who succeeded Mr. Bacon as Secretary of State, insisted again on the recommendation, so that some of the said Powers began to consider the subject, and when the administration of President Taft was ended, the Secretary had in mind the sending of a commissioner to Europe for the purpose of bringing about the creation of the court by some of the Powers already interested in the plan.

At the beginning of 1914, Mr. Loudon, Minister for Foreign Relations of The Netherlands, upon suggestion of an eminent American international lawyer, who, from his office in the Department of State at Washington, had been the principal instrumentality in the above-mentioned activities, proposed to the great Powers the plan prepared by the latter for the creation of the Court of Arbitral Justice. The great war which broke out soon afterwards as a consequence of the attitude of Austria-Hungary against Serbia and upon the occasion of the assassination of the heir apparent to that Monarchy, which took place at Serajevo, put a sudden stop to and paralyzed all these activities. It may be said, perhaps, that had the Court been already in existence at that time, it is possible that such a disastrous struggle might have been spared and prevented.

When in the fall of 1918, after the Central Empires of Europe had met with disaster and the armistice had been signed, all those who looked with approval to the creation of the court began to work with renewed vigor in order to attain their purpose, and from January 18, 1919, the date on which the Conference of the Allied and Associated Powers be-

gan at Paris, they brought their influence to bear upon the commission presided over by President Wilson, which was created to draw up a plan for a league or society of nations. In the draft convention presented to the commission by him for that purpose, there was a suggestion for the creation of the court; but the work prepared, in regard to the members of the court, by some persons, and especially by said eminent American international lawyer to whom reference has already been made, surely brought about the insertion of Article 14 in the Covenant creating the duty on the part of the Council of the League to formulate and submit plans for the establishment of a Permanent Court of International Justice, having jurisdiction to decide all disputes of an international character which the interested parties should submit to it, and the further duty of giving its opinion on any dispute or question submitted to it by the Council or the Assembly of the League.

The Council, as soon as it could, appointed an Advisory Committee of Jurists, which met from June 16 to July 24, 1920, in the Peace Palace at The Hague, in which were represented the United States of America, Great Britain, France, Italy, Japan, Spain, Brazil, Belgium, The Netherlands and Norway, under the presidency of Baron Descamps, of Belgium, the United States of America being represented upon this occasion by Elihu Root, ex-Secretary of State and President of the Carnegie Endowment for International Peace, who had with him during all the time the commission was in session the help and efficient cooperation of the Secretary of the Endowment and Director of its Division of International Law, and President of the American Institute of International Law, Mr. James Brown Scott.

The Council submitted, with some modifications, the draft convention prepared by the Advisory Committee of Jurists to the first Assembly of the League, and this, after introducing some changes in its provisions, especially in regard to the jurisdiction of the court, approved the draft convention, as already stated, at its session on December 13, 1920.

Article I on the Constitution of the Court, which I shall not examine for the reasons which I have already stated, specifically provides that independently of the Court of Arbitration, created by the Hague Conventions of 1899 and 1907, and of the special courts of arbitration to which the states are always at liberty to entrust the settlement of their disputes, there is created, in accordance with Article 14 of the Covenant of the League or Society of Nations, a Permanent Court of International Justice. After this the Constitution contains three chapters: the first refers to the Organization of the Court and includes Article 2 to Article 33, inclusive; the second refers to the Jurisdiction of the Court and includes Articles 34 to 38, inclusive; the third refers to the Procedure, and includes Articles 39 to 64, which is the last. There is also as a final aspect of the Constitution, besides the protocol of signature, the so-called optional clause by virtue of which the states which have accepted it recognize the obligatory jurisdiction of the court upon the conditions which they have deemed advisable. For the other states the jurisdiction is not obligatory.

From a cursory comparison between the draft convention prepared since the Hague Conference of 1907 and the final Constitution of the Court, the conclusion is inevitable that a great part of the principles of the said constitution are based on the work already prepared by the

officials of the American Department of State, or by the Carnegie Endowment.

And, as the eminent international lawyer who has taken such a great share in the said work is no other than the President of our American Institute of International Law, the Honorable James Brown Scott, whom we have the honor to entertain for a few days and who has just preceded me on this floor, it is only just, very just, that in concluding my remarks I should extend to him my salutation and, in the name of our Society, congratulate him for having at last seen realized his aspirations of so many years, which he had always cherished and hoped he might one day see realized, together with the great work which he, more than anybody else has, by his learning and his personal efforts, contributed to bring to a happy result.

While it has been said of the League of Nations that Leon Burgeois, the learned and illustrious president of the French Senate, is the grandfather and that Woodrow Wilson, the eminent champion of liberty and democracy, Lord Robert Cecil, the illustrious English parliamentarian, and General Smuts, the noted Prime Minister of South Africa, are its fathers, I may say, perhaps, that if the Permanent Court of International Justice also has parents, no one can really deserve more appropriately that title than Elihu Root and James Brown Scott, the two great Americans who, in the main, steer the course of the Carnegie Endowment for International Peace which has given origin to the American Institute of International Law and our own Cuban Society of International Law!

To return to the Assembly amendments to the Covenant, Article 16 is practically rewritten. It is proposed, first to substitute "residents" for "nationals" in the prohibition of intercourse between Members of the League and Covenant-breaking States, to eliminate the recommendation of the Council for the contribution of military force and to substitute its opinion as to whether the Covenant has been broken, to eliminate the agreement for military, financial and economic support to protect the Covenants of the League, substituting therefor a recommendation of the Council concerning the application of economic pressure. In order fully to understand these amendments it seems best to quote Article 16 as it now stands and follow with the article as it will read, if amended:

Article 16 as it now reads

Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force

the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

Proposed new Article 16

Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all the other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, prohibition of all intercourse between persons residing in their territory and the territory of the Covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between persons residing in the territory of the Covenant-breaking State and persons residing in the territory of any other State, whether a Member of the League or not.

It is for the Council to give an opinion whether or not a breach of the Covenant has taken place. In deliberations on this question in the Council the votes of Members of the League alleged to have resorted to war and of Members against whom such action was directed shall not be counted.

The Council will notify to all Members of the League the date which it recommends for the application of the economic pressure under this Article.

Nevertheless, the Council may, in the case of particular Members, postpone the coming into force of any of these measures for a specified period where it is satisfied that such a postponement will facilitate the attainment of the object of the measures referred to in the preceding paragraph, or that it is necessary in order to minimise the loss and inconvenience which will be caused to such Members.

Finally, the Assembly proposes to amend Article 26 governing the method of amending the Covenant. Since the article is completely revised, it again seems best to quote the article in its original form and follow it with its proposed amended form:

Article 26 as it now reads

Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

Proposed new Article 26

Amendments to the present Covenant the text of which shall have been voted by the Assembly on a three-fourths majority, in which there shall be included the votes of all Members of the Council represented at the meeting, will take effect when ratified by the Members of the League whose Representatives composed the Council when the vote was taken and by the majority of those whose Representatives form the Assembly.

If the required number of ratifications shall not have been obtained within twenty-two months after the vote of the Assembly, the proposed amendment shall remain without effect.⁷

The Secretary-General shall inform the Members of the taking effect of an amendment.

Any Member of the League which has not at that time ratified the amendment is free to notify the Secretary-General within a year of its refusal to accept it, but in that case it shall cease to be a Member of the League.

The proposed amendments have been embodied in separate protocols, each of which provides that "The present protocol will remain open for signature by the Members of the League; it will be ratified and the ratifications will be deposited as soon as possible with the Secretariat of the League." In explanation of this mode of procedure, the following extract from the report of the First Committee of the Second Assembly, dated September 30, 1921, is quoted by the Secretary-General in his letter transmitting copies of the protocols to the Members of the League:

A large number of Members expressed the opinion that the resolutions in no way formed a draft Convention, the product of a diplomatic conference, to which the representatives of the States would have to attach their signatures. It seemed to them rather the outcome of deliberation on the part of the Assembly, acting as an autonomous body in virtue of the competence conferred upon it by the Covenant.

According to this view, it is the Assembly's resolution which is subject to the ratification by the States and not the signatures of their representatives. Moreover, the representatives may not have voted in favour of the amendment ratified by the State which they represent. It would therefore seem sufficient that every resolution of amendment be drawn up in the form of an Act by the Assembly, signed by the President and the Secretary-General.

But certain Members of the Committee pointed out that such a procedure would violate the constitutional law of their State and would also conflict with diplomatic usage.

⁷ In his letter of transmittal to the Members of the League, the Secretary-General, on Nov. 24, 1921 (*Official Journal*, p. 7) quotes paragraph 2 of the amended article as giving a period of eighteen months within which the required number of ratifications shall be obtained, but the text of the Protocol (*Official Journal*, p. 28) gives this period as twenty-two months.

The Committee considered that, to avoid any difficulty on this point, it was desirable that the amendments should take the form of Protocols, embodying the resolutions of amendment voted by the Assembly, signed by the President and the Secretary-General, and also open to signature by plenipotentiaries.

The signatures of various numbers of representatives are attached to the above protocols.

GEORGE A. FINCH.

CURRENT NOTES

ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW

THE WASHINGTON HOTEL, WASHINGTON, D. C., APRIL 27-29, 1922

PROGRAM

THURSDAY, APRIL 27, 1922

At 8:30 o'clock p. m.

Opening address. Hon. ELIHU ROOT, *President of the Society.*

The Limitation of Armament by the Conference of Washington.

Rear Admiral HARRY S. KNAPP, *U. S. Navy, Retired.*

The Far Eastern Settlements of the Conference of Washington.

Professor W. W. WILLOUGHBY, *Legal Advisor to the Chinese Republic, 1916-1917.*

Mr. FREDERICK MOORE, *Foreign Councillor to the Japanese Ministry of Foreign Affairs.*

FRIDAY, APRIL 28, 1922

At 10 o'clock a. m.

Meeting of the Committee for the Advancement of International Law.

Remarks by the CHAIRMAN.

Meeting of the four Subcommittees in places to be assigned by the Chairman:

Subcommittee No. 1. Visit, Search and Capture.¹

Subcommittee No. 2. Status of Government Vessels.²

Subcommittee No. 3. Problems of Maritime Warfare, e.g., the abolition of the distinction between absolute and conditional contraband, and the extension of the doctrine of continuous voyage.³

Subcommittee No. 4. Offenses which may be characterized as international crimes and procedure for their prevention.⁴

¹ As outlined in the report of the Subcommittee submitted to the Society at its last annual meeting, *Proceedings*, 1921, p. 116.

² *Ibid.*, p. 120.

³ *Ibid.*, p. 121.

⁴ *Ibid.*, p. 123.

At 2:30 o'clock p. m.

Continuation of the meetings of the Subcommittees.

At 8:30 o'clock p. m.

The Equality of States. Baron S. A. KORFF, *Professor of Political Science, School of Foreign Service, Georgetown University.*

Reports to the Society of Subcommittees for the Advancement of International Law:

Subcommittee No. 1. Dr. DAVID JAYNE HILL, Chairman.

Subcommittee No. 2. Dr. HARRY PRATT JUDSON, Chairman.

Subcommittee No. 3. Professor GEORGE GRAFTON WILSON, Chairman.

Subcommittee No. 4. Honorable PAUL S. REINSCH, Chairman.

SATURDAY, APRIL 29, 1922

At 10 o'clock a. m.

Discussion of and action by the Society upon the reports of the Subcommittees for the Advancement of International Law.

Business meeting of the Society.

Adjournment of the Society.

Meeting of the Executive Council.

At 7:30 o'clock p. m.

Banquet at The Washington Hotel.

Banquet tickets may be secured by mail in advance by remitting \$7.00 for each place to George A. Finch, 2 Jackson Place, Washington, D. C. They will also be on sale during the meeting, but subscriptions will be closed as soon as the limit of accommodations has been reached and, in any event, at noon on Saturday, April 29.

Members having guests must give the names of the latter when the tickets are secured.

NOTICE OF PROPOSED AMENDMENT TO THE CONSTITUTION

Pursuant to the decision of the Executive Council at its meeting on April 28, 1921 (Proceedings, 1921, p. 60) to propose an amendment to the Constitution of the Society by which there shall be an interval between the successive periods of service of members elected to the Executive Council, the amendment not to operate, however, so as to require a change in the personnel of the permanent administrative officers who are now elected by the Executive Council from among its members, the following amendments to the first two paragraphs of Article IV of the Constitution will be proposed at the annual meeting of the Society in Washington, D. C., April 27-29, 1922:

(Omit words in brackets and insert words in italic.)

The officers of the Society shall consist of a President, an Honorary President, nine or more Vice-Presidents, the number to be fixed from time to time by the Executive Council, a Recording Secretary, a Corresponding Secretary, and a Treasurer, who shall be elected annually, and of an Executive Council composed of the [President, the Vice-Presidents] *foregoing officers*, ex officio, and twenty-four elected members, whose terms of office shall be three years, except that of those elected at the first election, eight shall serve for the period of one year only and eight for the period of two years, and that any one elected to fill a vacancy shall serve only for the unexpired term of the member in whose place he is chosen. *No elected member of the Executive Council shall be eligible for reelection for a period of one year from the expiration of the term of office for which he was previously elected.*

The Recording Secretary, the Corresponding Secretary and the Treasurer shall be elected by the Executive Council [from among its members]. The other officers of the Society shall be elected by the Society, except as hereinafter provided for the filling of vacancies occurring between elections.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD DECEMBER 16, 1921—FEBRUARY 28, 1922

(With references to earlier events not previously noted.)

WITH REFERENCES

Abbreviations: *Adv. of peace*, Advocate of peace; *B. I. I. I.*, Bulletin de l'Institut, Intermediaire International; *Bd. of Trade J.*, Board of Trade Journal (London); *Bundesbl.*, Switzerland, Bundesblatt; *Chunet*, Journal du droit international; *Cmd.*, Great Britain Parliamentary papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Contemp. R.*, Contemporary Review; *Costa Rica, Ga.*, La Gaceta; *Cuba. B. O. Sec. de Estado*, Boletin Oficial de la Secretaria de Estado; *Cur. Hist.*, Current History (New York Times); *D. G.*, Diario do Governo (Portugal); *D. O.*, Diario oficial (Brasil); *Deutsch. Reichs.*, Deutscher Reichsanseiger; *E. G.*, Eidgenossische gesetsblatt (Switzerland); *Edin. Rev.*, Edinburgh Review; *Europe, L'Europe Nouvelle*; *Evening Star* (Washington); *Figaro*, Le Figaro (Paris); *G. B. Treaty series*, Great Britain, Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gasetta Ufficiale (Italy); *Guatemalteco*, El Guatemalteco; *I. L. O. B.*, International Labor Office Bulletin; *J. O.*, Journal officiel (France); *L. N. M. S.*, League of Nations, Monthly Summary; *L. N. O. J.*, League of Nations, Official Journal; *L. N. T. S.*, League of Nations, Treaty series; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation* (N. Y.); *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan American Union Bulletin; *Press Notice*, U. S. State Dept. Press Notice; *Proclamation*, U. S. State Dept. Proclamation; *R. G. D. I. P.*, Revue Générale de Droit International Public; *Reichs G.*, Reichs-Gesetsblatt (Germany); *Rev. int. de la Croix-Rouge*, Revue international de la Croix-Rouge; *Staats*, Netherlands Staatsblad; *Staatscourant*, Nederlandsche Staatscourant; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

August, 1921

- 18 PARAGUAY—UNITED STATES. By Law 521, Paraguay approved Commercial travelers' convention, signed Oct. 20, 1919. *P. A. U.*, Mar. 1922, p. 303; *Paraguay. Gaceta oficial*, Aug. 18-20, 1921.
- 27 GREAT BRITAIN—PERU. Agreement respecting mineral property "La Brea y Parifias" signed at Lima. *G. B. Treaty ser.*, 1922, no. 1. *Cmd.* 1571.

October, 1921

- 10 BRAZIL—ITALY. Immigration treaty concluded at Rome. *P. A. U.*, Feb. 1922, p. 185.
- 11 HAGUE. Permanent Court of Arbitration. Decided that Peru should pay 25,000,000 francs in settlement of French claim. *N. Y. Times*, Oct. 12, 1921, p. 32; *Temps*, Oct. 14, 1921, p. 2.

October, 1921

- 15 GERMANY—GREAT BRITAIN. Germany gave notice that agreement of Dec. 31, 1920 (ratified Oct. 6, 1921) for execution of Sec. IV, Art. X of Treaty of Versailles, should include New Zealand despite the protocol. British government gave notice on Mar. 12, 1921 that India would be included in this agreement. *Reichs G.*, Oct. 28, 1921, p. 1309.
- 24 FRANCE—HUNGARY. In accordance with Art. 224 of the Treaty of Trianon, France notified Hungary of the coming into force of the extradition conventions of Nov. 13, 1855 and Feb. 12, 1869, and the declaration of Aug. 29, 1892, concerning transmission of documents relating to civil status. *J. O.*, Dec. 29, 1921, p. 14191.
- 29 to Nov. 23 Central European States Economic Conference. Held at Portorose, Italy, with representatives of Austria, Hungary, Rumania, Poland, Czechoslovakia, Yugoslavia and Italy in attendance. Agreements reached on commercial relations, transportation, postal service, etc. *Commerce repts.*, Jan. 23, 1922, p. 35, 173. Protocol of commercial agreement signed Nov. 23, 1921. List of other agreements: *B. I. I. I.*, Jan. 1922, p. 173.

November, 1921

- 7 CHINA—UNITED STATES. Treaty of Oct. 20, 1920 confirming application of a 5 per cent ad valorem rate of duty on importation of American goods into China by citizens of the United States proclaimed by President Harding. Text: *U. S. Treaty ser.*, no. 657.
- 12 BELGIUM—GERMANY. Ratifications exchanged at Aix-la-Chapelle of the treaty concluded Apr. 23, 1920, concerning the transition of administration of justice in the Eupen and Malmedy zones. *Reichs G.* Dec. 13, 1921, p. 1532.

December, 1921

- 5 GERMANY—POLAND. Ratifications exchanged in Warsaw of the treaty of Feb. 12, 1921 concerning interned persons. *Reichs G.*, 1921, no. 114, p. 1540.
- 11 CZECHOSLOVAK REPUBLIC—ITALY. Treaty of commerce and navigation of Mar. 23, 1921 ratified by Italy. Summary of treaty: *Bd. of Trade J.*, Feb. 16, 1922, p. 183.
- 15(?) POSTAL RATES. Changes effective Jan. 1, 1922, made by the Universal postal congress held in Madrid, Oct.—Nov. 1920, made public. *U. S. Off. Postal Guide*, Dec. 1921, p. 23.
- 16 AUSTRIA—CZECHOSLOVAK REPUBLIC. Political agreement to last five years concluded at Prague. *N. Y. Times*, Dec. 19, 1921, p. 3; Summary: *Times*, Dec. 22, 1921, p. 9. Text: *Europe*, Jan. 7, 1922, p. 25; *Nation (N. Y.)* Mar. 1, 1922, p. 273. Trade agreement signed

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- at Prague (at same time political agreement was signed). *Nation* (N. Y.) Mar. 1, 1922, p. 274.
- 16 to Feb. 2, 1922 **IRISH TREATY.** Ratified on Dec. 16 by British Parliament by vote of 401-58 in Commons and 167-47 in Lords. *Times*, Dec. 17, 1921, p. 10. Ratified by Dail Eireann on Jan. 7, 1922, by vote of 64 to 57. *N. Y. Times*, Jan. 8, 1922, p. 1; *Cur. Hist.*, Feb. 1922, 15: 851. Ratified by Southern Parliament, convened by President Griffith, and provisional government established on Jan. 14. *Times*, Feb. 16, 1922, p. 10. Dublin Castle occupied by Provisional Government on Jan. 16. *Times*, Jan. 17, 1922, p. 10; *Cur. Hist.*, Feb. 1922, 15: 851. At a conference in London on Jan. 20, the Ulster Premier, Sir James Craig and Michael Collins reached an agreement on procedure for settlement of boundary question, Belfast boycott and railroad dispute. On Feb. 2, a deadlock occurred in the negotiations between Sir James Craig and Michael Collins. *Naval Inst. Proc.*, Mar. 1922, p. 511.
- 17 **BURGENLAND PLEBISCITE.** Result showed 15,343 votes for Hungary and 8,277 for Austria. *Times*, Dec. 19, 1921, p. 10.
- 18 **WILHELM II, EX-EMPEROR OF GERMANY.** Letter of Von Hindenburg of Mar. 30, 1921 and Kaiser's reply of Apr. 5, concerning Germany's war guilt made public. Text of letters: *N. Y. Times*, Dec. 9, 1921, p. 1, 6.
- 19(?) **GERMANY—SERB, CROAT, SLOVENE STATE.** Commercial treaty, relative to tariffs signed [at Belgrade?] *Commerce repts.*, Feb. 13, 1922, p. 395.
- 19 **SPAIN—SWITZERLAND.** Spain denounced commercial agreement of July 11-12, 1921, effective Jan. 19, 1922. *Ga. de Madrid*, Dec. 30, 1921, p. 1098.
- 19-24 **INTERNATIONAL AERONAUTICAL LAW CONGRESS.** Fourth congress held under patronage of the Prince of Monaco. *Clunet*, Nov. 1921, p. 1020.
- 20 **ALAND ISLANDS.** Finland ratified convention of Oct. 20, 1921 for neutralization of the Islands. *Temps*, Dec. 22, 1921, p. 1.
- 20 **FINLAND—FRANCE.** Commercial treaty signed at Paris, July 3, 1921, ratified by Finland. *Temps*, Dec. 22, 1921, p. 1.
- 20 **GERMANY—SPAIN.** Spain denounced treaty of Feb. 12, 1899 regulating commercial relations, effective Dec. 20, 1922. *Ga. de Madrid*, Dec. 28, 1921, p. 1072; *Commerce repts.*, Feb. 20, 1922, p. 474.
- 20 **HUNGARY—UNITED STATES.** Peace treaty proclaimed by President Harding. Ratifications exchanged at Budapest, Dec. 17, 1921. *U. S. Treaty series*, no. 660.

December, 1921

20 to Feb. 17, 1922 LITHUANIA—POLAND. Lithuania and Poland, the former by a note of Dec. 20, 1921, the latter by verbal declarations of its representative at League Council on Sept. 20, 1921, refused to accept final recommendation of Council for settlement of dispute in regard to Vilna district. On Jan. 12, 1922, both renewed refusal to abide by League's solution. On Jan. 13, Council adopted resolution stating that these refusals put an end to procedure of conciliation of Council, instituted by its resolution of Mar. 3, 1921, and that its Military Commission of Control would therefore be withdrawn; invited the two governments to confide their interests to friendly powers for supervision of measures in interests of peace; affirmed duty of League of Nations to protect minorities in both countries; requested reply to resolution within ten days. *L. N. O. J.*, Feb. 1922, p. 99, 135. Lithuania's reply of Jan. 21 and Poland's reply of Jan. 23 were conciliatory in tone. Summary: On Feb. 17, Military Commission of Control was withdrawn from territories concerned. *L. N. M. S.*, Feb. 1922, p. 38.

20 to Jan. 19, 1922 TACNA—ARICA QUESTION. Chile's answer of Dec. 20 to Peru's proposal of Dec. 18 for arbitration invited continuance of direct negotiations. *Wash. Post*, Dec. 21, 1921, p. 2. On Dec. 22 Bolivia sent note to Chile and Peru approving Peruvian proposal to submit problem to the arbitration of the United States. *Wash. Post*, Dec. 23, 1921, p. 1. On Dec. 25 Peru replied to Bolivia's note agreeing to an arbitration conference in Washington. Chile sent note to Peru accepting proposal for Washington conference. *Wash. Post*, Dec. 27-28, 1921, p. 2, 3. On Dec. 28, Peru urged Chile to abandon proposal of direct negotiation and submit controversy to arbitration of United States. *Times*, Dec. 30, 1921, p. 7. Identic notes sent by Secretary Hughes to Chile and Peru on Jan. 17 inviting them to send representatives to Washington for settlement of question arising from Treaty of Ancón (Tacna Arica dispute). On Jan. 18, Chile accepted invitation. Text of American note: *Wash. Post*, Jan. 19, 1922, p. 5. On Jan. 19, Peru accepted the invitation. Partial text: *Wash. Post*, Jan. 20, 1922, p. 1. See article by John Barrett on coming conference [in April]. Text: *N. Y. Times*, Feb. 15, 1922, p. 12.

21 BELGIUM—SPAIN. Agreement reached by an exchange of notes concerning tariff regulations. *Ga. de Madrid*, Dec. 31, 1921, p. 1108: *Monit.*, Jan. 21, 1922, p. 672.

21 to Feb. 28, 1922 GERMAN REPARATIONS. French and British governments in London conference on Dec. 21, 1921, drew up a list of "suggestions" on German declaration concerning reparations, as basis for Cannes discussions. On failure of Cannes conference to

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- take final action, the Interallied Reparations commission on Jan. 13 called on Germany to present program of reparation deliveries. German reply of Jan. 27 was transmitted to Allied governments. Texts: *Europe*, Feb. 4, 1922, p. 147; *Temps*, Jan. 31, 1922, p. 1. On Feb. 28, it was announced that a provisional agreement had been reached between Reparations Commission and German government for payments in cash and in kind. *Wash. Post*, Mar. 1, 1922, p. 1.
- 21(?) PERSIA—SOVIET RUSSIA. Political treaty signed at Moscow, Feb. 26, 1921, ratified by Persia. *Temps*, Dec. 23, 1921, p. 1.
- 24 COLOMBIA—PANAMA. Independence of Panama was recognized by Colombia, when ratification of the treaty of April 6, 1914 was approved by Chamber of Deputies at Bogota. *Cur. Hist.*, Feb. 1922, 15: 872.
- 24 COLOMBIA—UNITED STATES. Treaty of Apr. 6, 1914 reimbursing Colombia for territorial losses sustained through the setting up of the Republic of Panama, ratified by Colombia. *N. Y. Times*, Dec. 25, 1921, p. 4; *P. A. U.*, Feb. 1922, p. 186.
- 25 BOLIVIA—PERU. Peru sent note to Bolivia offering to co-operate in bringing about arbitration, provided controversy between Peru and Chile is settled by arbitration. *Cur. Hist.*, Feb., 1922, 15: 873.
- 26 GUATEMALA. Ratified pact of Central American union "in principle." *Wash. Post*, Dec. 27, 1921, p. 6.
- 26 ITALY—SOVIET RUSSIA. Commercial treaty signed. Text: *Europe*, Jan. 7, 1922, p. 23; *Russian information*, Feb. 1, 1922, p. 210; *Cur. Hist.*, Mar. 1922, 15: 1034.
- 26 ITALY—UKRAINE. Commercial treaty signed. *Commerce repts.*, Jan. 9, 1922, p. 99.
- 30(?) BALTIC STATES CONFERENCE. Held at Reval to discuss economic questions and agree upon common plan for resumption of commercial relations with Soviet Russia. *Cur. Hist.*, Mar. 1922, 15: 1052.
- 30 CAUCASUS FEDERATION. Sponsored by the Russian Soviet government, the so-called republics Azerbaijan, Armenia, Georgia, Ajaristan, and the District of Nakitchevan, formed a federation under Russian rule, with political center at Baku. Note from Chicherin to Angora government signalized the change. *Cur. Hist.*, Feb.-Mar. 1922, 15: 864, 1048.
- 30 to Jan. 5-6, 1922 NETHERLANDS—SPAIN. Agreement reached concerning tariff regulations, by exchange of notes. *Ga. de Madrid*, Jan. 13, 1922, p. 231.
- 30-31 RUSSIAN CONSORTIUM. Allied financiers held conference in Paris and adopted resolutions on financial matters to be submitted to the Supreme Council at Cannes. *Temps*, Jan. 1, 1922, p. 1.

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- 31(?) DANZIG—POLAND. Economic agreement [of Oct. 25, 1921] ratified by Danzig Diet. *Temps*, Jan. 2/3, 1922, p. 1; *Commerce repts.*, Dec. 19, 1921, p. 981.
- 31 GERMANY—UNITED STATES. Diplomatic relations officially renewed. *N. Y. Times*, Jan. 1, 1922, p. 3.

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- 2-10 TURKEY—UKRAINE. Treaty of friendship signed at Angora on Jan. 2, 1922. *Wash. Post*, Jan. 6, 1922, p. 1. Ratified by Turkey on Jan. 10. *Wash. Post*, Jan. 12, 1922, p. 6.
- 4 PERSIA. Assented to membership in League of Nations. *Wash. Post*, Jan. 7, 1922, p. 6.
- 5 GERMAN FOREIGN OFFICE. Announced that it will publish all documents in its archives relating to the foreign policies of all the European cabinets from 1871 to 1914. *Wash. Post*, Jan. 6, 1922, p. 1; *Times*, Jan. 6, 1922, p. 9.
- 6-12 CANNES CONFERENCE. Premiers of Great Britain, France and Italy, with representatives of other nations and Ambassador Harvey present in advisory capacity for the United States, met at Cannes. Chief accomplishment was an agreement to issue invitation to all European nations and the United States to attend a conference for economic reconstruction of Central and Eastern Europe. The fall of the Briand ministry brought the conference to a close. Proceedings of conference, text of resolution, etc. *Europe*, Jan. 21, 1922, p. 75.
- 6 to Feb. 25 GENOA CONFERENCE. Supreme Council issued resolution on Jan. 6, calling for general economic conference of all European states including Germany, Austria, Hungary and Russia. Text: *Times*, Jan. 7, 1922, p. 10. Invitation to United States received at State Department on Jan. 17. Text: *Wash. Post*, Jan. 18, 1922, p. 9. On Jan. 19 the program of the conference was made public. Summary: *Europe*, Mar. 4, 1922, p. 278; *Times*, Jan. 27, 1922, p. 9. On Feb. 9 France sent note to Powers asking postponement of Conference and criticizing agenda. Summary: *Times*, Feb. 10, 1922, p. 10. Official communiqué issued on Feb. 25 after conference at Boulogne between Lloyd George and Poincaré, stating that conference had been postponed to April 10. *Europe*, Mar. 4, 1922, p. 281.
- 7(?) ESTHONIA—FRANCE. Signing of a commercial treaty announced, granting most-favored nation treatment to France and minimum tariff on certain goods to Esthonia. *Cur. Hist.*, Mar. 1922; 15: 1052.
- 8 VILNA PLEBISCITE. Resulted in majority of votes in favor of Poland. *Wash. Post*, Jan. 11, 1922, p. 5; *Temps*, Jan. 13, 1922, p. 2.

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- 10 LEAGUE OF NATIONS. Resumé of accomplishments and list of members of League published on its second anniversary. Text: *Cong. rec.*, Jan. 10, 1922, p. 1178.
- 10-14 LEAGUE OF NATIONS. COUNCIL. Held 16th session at Geneva. Proceedings: *L. N. O. J.*, Feb. 1922.
- 11 FRANCE—GREAT BRITAIN. Treaty of guaranty sent to Briand by Lloyd George. Text: *N. Y. Times*, Jan. 14, 1922, p. 3; *Nation* (*N. Y.*) Mar. 1, 1922, p. 272. French counter-proposals and British reply led to further exchange of views on pact. *Naval inst. Proc.*, Mar., 1922, p. 515; *Times*, Feb. 4, 1922, p. 10.
- 13(?) AFGHANISTAN—PERSIA. Commercial agreement concluded at Teheran. *Temps*, Jan. 14, 1922, p. 4.
- 13(?) AUSTRIA—HUNGARY. Commercial treaty signed at Vienna. *Temps*, Jan. 15, 1922, p. 4.
- 18 GUATEMALA. National Assembly decided to secede from the Central American union. *Wash. Post*, Jan. 19, 1922, p. 1; *Cur. Hist.*, Mar. 1922, 15: 1049.
- 19 BELGIUM—SPAIN. Temporary tariff *modus-vivendi* became effective. *Commerce repts.*, Feb. 13, 1922, p. 395.
- 19 DENMARK—SPAIN. Temporary tariff *modus-vivendi* became effective. *Commerce repts.*, Feb. 13, 1922, p. 395.
- 19 NETHERLANDS—SPAIN. Temporary tariff *modus-vivendi* became effective. *Commerce repts.*, Feb. 13, 1922, p. 395.
- 20(?) SPAIN—SWITZERLAND. *Modus vivendi* concerning commercial relations prorogued until Feb. 15, 1922. *Ga. de Madrid*, Jan. 31, 1922, p. 460.
- 21 SOVIET RUSSIA. Accepted invitation of Supreme Council to attend Genoa conference. Text of invitation and reply: *Russian information*, Feb. 1, 1922, p. 208.
- 22 BAJER, FREDRIK. Died at Copenhagen in his 85th year. *Mouvement pacifiste*, Feb. 1922, p. 16.
- 22 BRYCE, LORD. Died at Sidmouth, England. *Times*, Jan. 23, 1922, p. 10.
- 26 IRISH FREE STATE—PERSIA. Irish Free State recognized by Persia. *N. Y. Times*, Jan. 27, 1922, p. 4.
- 27 AUSTRIA—CZECHOSLOVAK REPUBLIC. Austrian National council adopted the political agreement, signed at Prague, Dec. 16, 1921. *Temps*, Jan. 28, 1922, p. 1.
- 27 GERMANY—SWITZERLAND. German Reichsrat approved ratification of arbitration treaty, concluded Dec. 3, 1921 at Berne. *Temps*, Jan. 28, 1922, p. 4.

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- 27 INTERNATIONAL LAW ASSOCIATION. American branch organized in New York. *Amer. Bar Assoc. Jour.*, Feb. 1922, p. 70.
- 27 IRISH RACE CONGRESS. Elected Eamon de Valera, President, in its session at Paris. *Cur. Hist.*, Mar. 1922, 15: 1058.
- 27(?) RUMANIA—SERB, CROAT, SLOVENE STATE. Military agreement signed at Belgrade. *Temps*, Jan. 28, 1922, p. 2.
- 29 CENTRAL AMERICAN REPUBLIC. Provisional Federal Council sitting at Tegucigalpa, dissolved, owing to overthrow of Herrera regime in Guatemala on Dec. 5. *Cur. Hist.*, Mar. 1922, 15: 1049.
- 29 ESTHONIA—FINLAND. Treaty signed providing reciprocal customs preference. *Cur. Hist.*, Mar. 1922, 15: 1052.
- 30 FRANCE—PORTUGAL. Provisional commercial agreement, to run six months, signed at Lisbon. *Commerce repts.*, Feb. 27, 1922, p. 530; Text: *J. O.*, Feb. 24, 1922, p. 2286.
- 30 to Feb. 15 PERMANENT COURT OF INTERNATIONAL JUSTICE. Held preliminary meeting at Hague Peace Palace on Jan. 30 for election of officers. M. Loder elected President. *Temps*, Feb. 1, 1922, p. 2. At second meeting on Feb. 3, André Weiss was elected vice-president. *Temps*, Feb. 9, 1922, p. 2. On Feb. 15, the formal opening took place. *N. Y. Times*, Feb. 16, 1922, p. 1; *Times*, Feb. 16, 1922, p. 9. *L. N. M. S.*, Feb. 1922, p. 26.
- 31 to Feb. 21 DEBT REFUNDING COMMISSION. Act to create commission for refunding of foreign debts passed Senate on Jan. 31. *Cong. rec.*, Jan. 31, 1922, p. 2200. Signed by President on Feb. 9. *Wash. Post*, Feb. 10, 1922, p. 13. Commissioners appointed by President on February 21. *N. Y. Times*, Feb. 22, 1922, p. 1.

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- 1-6 CONFERENCE ON LIMITATION OF ARMAMENT. Fifth plenary session held on Feb. 1, when Five-power naval treaty was approved, the Shantung treaty presented to the conference, the Five-power submarine-gas treaty approved and various resolutions regarding China adopted. Sixth plenary session held on Feb. 4, when Nine-power treaty with respect to integrity of China and a treaty relating to Chinese tariff were adopted. Seventh and last plenary session was held on Feb. 6, when the following treaties were signed: Annex to the Four-power treaty defining the term "insular possessions and insular dominions"; Naval treaty; Submarine-gas treaty; Nine-power treaty relating to China; Chinese revenue treaty. President Harding delivered his closing address and the conference adjourned. Texts: *Cur. Hist.*, Feb.-Mar. 1922; 67th Cong., 2d sess. *Senate Doc.* 126. The following Resolutions were adopted by the Conference: No. 1. Resolution for a commission of jurists to consider amendment.

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of laws of war; No. 2. Resolution limiting jurisdiction of commission of jurists provided in resolution No. 1; No. 3. Resolution regarding a board of reference for Far Eastern question. Feb. 4, 1922. No. 4. Resolution regarding extraterritoriality in China. Dec. 10, 1921. No. 5. Resolution regarding foreign postal agencies in China; No. 6. Resolution regarding armed forces in China; No. 7. Resolution regarding radio stations in China and accompanying declarations; No. 8. Resolution regarding unification of railways in China and accompanying declaration by China; No. 9. Resolution regarding the reduction of Chinese military forces; No. 10. Resolution regarding existing commitments of China or with respect to China. Feb. 1, 1922. No. 11. Resolution regarding the Chinese eastern railway, approved by all the powers including China, Feb. 4, 1922. No. 12. Resolution regarding the Chinese eastern railway, approved by all the powers other than China (no date) *67th Cong., 2d Sess. Senate Doc.* 124, 125 and 126.

- 3 BELGIUM—LUXEMBURG. Belgian Chamber of Deputies ratified the economic treaty [of May 17, 1921] *Temps*, Feb. 4, 1922, p. 2.
- 3 BULGARIA—UNITED STATES. Bulgarian Cabinet approved a treaty of amity and commerce with the United States. *Naval inst. Proc.*, Mar. 1922, p. 516.
- 4(?) AUSTRIA—CZECHOSLOVAK REPUBLIC. Agreement, concluded at Prague, provides for a loan to Austria, payable in twenty years. *Temps*, Feb. 6, 1922, p. 2.
- 4 BELGIAN—HUNGARIAN MIXED ARBITRAL TRIBUNAL. Establishment announced. *U. S. Weekly consular report*, Feb. 4, 1922.
- 4 GREAT BRITAIN—PORTUGAL. Agreement, signed London, June 14, 1913, regulating opium monopolies in Hong Kong and Macao, denounced by Great Britain. *Lond. Ga.*, Mar. 3, 1922, p. 1817.
- 4 SALVADOR. Resumed its independent sovereignty following collapse of the Central American union. *Wash. Post*, Feb. 8, 1922, p. 2.
- 6 CHINA—JAPAN. Treaty, embodying terms of transfer of Kiao-Chau and the Shantung Railway together with other rights formerly held by Germany, was signed at Washington. Text: *Cur. Hist.*, Mar. 1922, 15: 1030.
- 6 FRANCE—POLAND. Commercial treaty signed granting "most-favored nation" treatment. Chief provisions: *Commerce repts.*, Feb. 27, 1922, p. 530.
- 6-7 INTERALLIED COMMISSION ON WAR CRIMES. Adopted two resolutions at its sessions in Paris, declaring conduct of recent trials in Leipzig unsatisfactory and recommending surrender of Germans charged

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- with war crimes to an Allied court for trial. *Wash. Post*, Jan. 15, 1922, p. 3.
- 6 VATICAN. Cardinal Achille Ratti elected Pope (Pius XI) succeeding Pope Benedict XV, who died Jan. 22. *Cur. Hist.*, Mar. 1922, 15: 939.
 - 7 COSTA RICA—GREAT BRITAIN. Announced that the difference arising over certain petroleum concessions to a British financial group will be submitted to Chief Justice Taft for arbitration. *Temps*, Feb. 9, 1922, p. 1.
 - 9 SOVIET RUSSIA—SWEDEN. Agreement reached on proposals for a commercial treaty. *Wash. Post*, Feb. 10, 1922, p. 4; *Cur. Hist.*, Mar. 1922, 15: 1064.
 - 10(?) AUSTRIA—HUNGARY. Provisional economic treaty signed [at Budapest?]. *Temps*, Feb. 12, 1922, p. 1.
 - 10 CONFERENCE ON LIMITATION OF ARMAMENT. Seven treaties laid before the Senate of the United States by President Harding, accompanied by minutes of plenary sessions and committee meetings, and official report of American delegation. Text of speech and list of treaties. *Cong. rec.*, Feb. 10, 1922, p. 2680; 67th Cong., 2d sess. *Senate Doc.* 124, 125, 126.
 - 11 HAGUE. PERMANENT COURT OF ARBITRATION. Max Huber designated as President of the Court, in arbitration of claims of Norwegian shipowners against the United States government. *Temps*, Feb. 13, 1922, p. 2.
 - 11 HONDURAS. Resumed its status as a sovereign republic under its former constitution, following collapse of the federation. *Cur. Hist.*, Mar. 1922, 15: 1049.
 - 11 to March 1 JAPAN—UNITED STATES. Yap agreement signed in Washington on Feb. 11. *N. Y. Times*, Feb. 12, 1922, p. 1. Sent to U. S. Senate by President Harding on Feb. 13. *N. Y. Times*, Feb. 14, 1922, p. 1. Reported favorably in Senate on Feb. 20. *Cong. rec.*, Feb. 20, 1922, p. 3092. Ratification approved by Senate on Mar. 1 by a vote of 67-22. Text: *Cong. rec.*, Mar. 1, 1922, p. 3568.
 - 11 NORWAY—SPAIN. Spain denounced navigation convention, signed Mar. 15, 1883 and prorogued by declaration of June 23, 1887. *Ga. de Madrid*, Feb. 16, 1922, p. 726.
 - 13(?) CAUCASUS FEDERATION—PERSIA. Commercial treaty signed [at Teheran] *Temps*, Feb. 16, 1922, p. 1.
 - 14 GERMAN—POLISH CONFERENCE. Opened at Geneva to draw up convention on Upper Silesian regime. Drafting committees were appointed. *L. N. M. S.*, Feb. 1922, p. 36.

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- 14 **INTERALLIED AIR COMMISSION.** Began to make its dispositions for closing down, and by May 5 will have ceased to exist. Summary of achievements: *Times*, Feb. 16, 1922, p. 10.
- 14-16 **INTERNATIONAL AIR-SHIPS CONFERENCE.** Held in London. List of resolutions adopted: *Times*, Feb. 14, 1922, p. 7.
- 14(?) **SERB, CROAT, SLOVENE STATE.** Decided to renounce benefits of paragraph 18, annex 2, pt. VIII (reparations) of Versailles treaty. *Temps*, Feb. 15, 1922, p. 2.
- 17(?) **CZECHOSLOVAK REPUBLIC—FRANCE.** Senate of Czechoslovakia ratified treaty with France concerning tax on sequestration of Czechoslovak property in France, and adopted the pact regulating questions of law and property. *Temps*, Feb. 18, 1922, p. 2.
- 19 **SOVIET RUSSIA.** Representatives of Russian Soviet returned to Moscow with proposals from France, Great Britain and Germany looking toward Russian economic reconstruction. *N. Y. Times*, Feb. 20, 1922, p. 2.
- 20 **FRANCE—GREAT BRITAIN.** Reply of British government to French note, accepted, with reservations, the latter's proposal that Reparations Commission be charged with duty of fixing German payments for 1922. *Times*, Feb. 21, 1922, p. 9.
- 20 **LEAGUE OF NATIONS COMMISSION ON REDUCTION OF ARMAMENTS.** Met in Paris to discuss execution of resolution adopted by second Assembly of the League. *Times*, Feb. 21, 1922, p. 9. *L. N. M. S.*, Feb. 1922, p. 29.
- 20 **LITHUANIA—POLAND.** Newly elected Vilna Diet by unanimous vote of 96 members present declared for union with Poland. Summary of motion: *Times*, Feb. 23, 1922, p. 11.
- 22 **COSTA RICA—UNITED STATES.** Senate approved ratification of extradition treaty, signed at San José, Jan. 21, 1922. Text: *Cong. rec.*, Feb. 22, 1922, p. 3219.
- 22 **GERMANY—UNITED STATES.** Consent given to treaty reviving patent convention signed at Washington, Feb. 23, 1909. *Cong. rec.*, Feb. 22, 1922, p. 3219.
- 22 **IRELAND.** National Sinn Fein convention agreed to adjourn for three months and to defer election for three months. Text of agreement: *Wash. Post*, Feb. 23, 1922, p. 1.
- 23 **CANADA—FRANCE.** By an Order in council the Canadian tariff concessions to France in the trade agreement of Jan. 29, 1921 were extended to Algeria, French colonies and possessions, territories of the protectorate of Indo-China and territories of the Saar Basin. *Commerce repts.*, Mar. 13, 1922, p. 647.

February, 1922

- 25 BOULOGNE CONFERENCE. Lloyd George and Poincaré met at Boulogne to discuss program of Genoa conference. *Times*, Feb. 27, 1922, p. 10.
- 26(?) INTERNATIONAL COMMISSION OF INQUIRY (The Hague). Awarded verdict against Germany in case of sinking of steamship *Tubantia* which the Dutch declared was done by a German submarine in the North Sea during the war. *Times*, Feb. 28, 1922, p. 11; *Temps*, March 1, 1922, p. 2.
- 26 INTERNATIONAL COMMISSION OF THE ELBE. Completed its work. *Temps*, Feb. 27, 1922, p. 1.
- 27 CENTRAL INTERNATIONAL CORPORATION. Organizing committee issued report on results of Conference on European reconstruction, held in London, Feb. 20-27, which was attended by representatives of Great Britain, France, Italy, Belgium, Japan, Germany, Denmark and by an unofficial representative of the United States. Delegates were pledged to endeavor to procure establishment of national corporations in various countries affiliated with a Central Corporation to be formed in London, such corporations to seek opportunities for undertaking and financing reconstruction work in Europe. *Times*, Feb. 28, 1922, p. 12.
- 28 BOLIVIA—UNITED STATES. President Harding's reply to offer of President Saavedra for Bolivian intervention in Chile-Peru controversy received at La Paz. *Cur. Hist.*, Mar. 1922, 15: 1047.
- 28 EGYPT—GREAT BRITAIN. Declaration of British policy toward Egypt, terminating the British Protectorate, delivered by Lord Allenby to the Sultan and made public. Text: *Cmd.* 1592. *Times*, March 1 and 2, 1922, p. 9 and 12.

INTERNATIONAL CONVENTIONS

ARMS AND AMMUNITIONS TRADE. Saint Germain-en-Laye, Sept. 10, 1919.

Ratification:

Chile. (by law No. 3,632 of 1921) *P. A. U.*, Feb. 1922, p. 186.

Venezuela. Feb. 19, 1921. *L. N. O. J.*, Jan. 1922, p. 39.

CHINESE CUSTOMS TARIFF. Washington, Feb. 6, 1922.

Signatures:

Belgium, China, France, Great Britain, Italy, Japan, Netherlands, Portugal, United States. Text: *67th Cong.*, 2d sess. *Senate Doc.* 124; *Cur. Hist.*, Mar. 1922, 15: 1028.

COMMERCIAL STATISTICS. Brussels, Dec. 31, 1913.

Adhesion:

Austria. Jan. 28, 1922. *E. G.*, Feb. 8, 1922, p. 118.

CONVENTIONS: (1) Collisions; (2) Assistance and Salvage at Sea. Brussels, Sept. 23, 1910.

Adhesion:

Danzig. Nov. 2, 1921. *Reichs. G.*, Dec. 9, 1921, p. 1489.

Poland. *B. I. I. I.*, Jan. 1922, p. 171.

COPYRIGHT UNION. Revision, Berlin, Nov. 13, 1908. Protocol, Berne, Mar. 20, 1914.

Adhesion:

Bulgaria. Dec. 5, 1921. *E. G.*, Dec. 28, 1921, p. 878; *Monit.*, Jan. 20, 1922, p. 567; *Ga. de Madrid*, Jan. 18, 1922, p. 303.

CUSTOMS TARIFFS PUBLICATION. Brussels, July 5, 1890.

Notification that convention is binding:

Austria. Dec. 7, 1921. *E. G.*, Dec. 28, 1921, p. 882; *Ga. de Madrid*, Jan. 3, 1922, p. 24.

EMPLOYMENT OF CHILDREN IN INDUSTRY. Washington, Nov. 28, 1919.

Adhesion:

Switzerland. *I. L. O. B.*, Feb. 15, 1922, p. 107.

FALSE INDICATION OF ORIGIN OF GOODS. Madrid, Apr. 14, 1891. Revision, Washington, June 2, 1911.

Adhesion:

Cuba. June 1, 1921. *Cuba. B. O. de Sec. de Estado*, Sept. 1921, p. 1 (appendix).

Czechoslovak Republic. *B. I. I. I.*, Jan. 1922, p. 168.

FREEDOM OF TRANSIT. Barcelona, Apr. 20, 1921.

Ratification:

Albania. Oct. 8, 1921. *L. N. T. S. (annex) III*, 1, p. 11; *B. I. I. I.*, Jan. 1922, p. 166.

HOSPITAL SHIPS. The Hague, Dec. 21, 1904.

Adhesion:

Danzig. Oct. 31, 1921.

Poland. Oct. 31, 1921. *E. G.*, Dec. 21, 1921, p. 873. *Monit.*, Jan. 7, 1922, p. 219.

INTERNATIONAL EXCHANGE OF DOCUMENTS AND PUBLICATIONS. Brussels, Mar. 15, 1886.

Adhesion:

Poland. Apr. 24, 1921. *B. I. I. I.*, Jan. 1922, p. 168.

INTERNATIONAL OPIUM CONVENTION, 2D. Protocol. The Hague, Jan. 23, 1912.

Adhesion:

Denmark.

Iceland. *B. I. I. I.*, Jan. 1922, p. 169.

LETTERS, ETC. OF DECLARED VALUE. Madrid, Nov. 30, 1920.

Adhesion:

Danzig. *B. I. I. I.*, Jan. 1922, p. 169.

Lithuania. Dec. 29, 1921. *Ga. de Madrid*, Feb. 23, 1922, p. 819.

Ratification:

China. Oct. 12, 1921.

Czechoslovak Republic. Nov. 23, 1921. *Ga. de Madrid*, Jan. 22, 1922, p. 345.

Egypt. Dec. 24, 1921. *Ga. de Madrid*, Jan. 8, 1922, p. 158.

Finland. Dec. 21, 1922. *Ga. de Madrid*, Jan. 28, 1922, p. 440.

Newfoundland. Nov. 15, 1921. *Ga. de Madrid*, Feb. 8, 1922, p. 556.

Switzerland. Dec. 27, 1921. *Ga. de Madrid*, Jan. 22, 1922, p. 345.

LETTERS, ETC. OF DECLARED VALUE. Rome, May 26, 1906.

Adhesion:

Danzig. *B. I. I. I.*, Jan. 1922, p. 169.

Serb, Croat, Slovene State. *Monit.*, Feb. 1, 1922, p. 1031; *Ga. de Madrid*, Jan. 18, 1922, p. 303.

LIQUOR TRAFFIC IN AFRICA. Saint Germain-en-Laye, Sept. 10, 1919.

Ratification:

Belgium.

France.

Great Britain. *L. N. M. S.*, Jan. 1922, p. 5.

MERCHANDISE TRANSPORT BY RAILWAY. Berne, Oct. 14, 1890

Adhesion:

Poland. Jan. 23, 1922. *E. G.*, Feb. 1, 1922, p. 20.

MONEY ORDERS. Madrid, Nov. 30, 1920.

Adhesion:

Danzig. *B. I. I. I.*, Jan. 1922, p. 169.

Lithuania. Dec. 29, 1921. *Ga. de Madrid*, Feb. 23, 1922, p. 819.

Ratification:

China. Oct. 12, 1921.

Czechoslovak Republic. Nov. 23, 1921. *Ga. de Madrid*, Jan. 22, 1922, p. 345.

Egypt. Dec. 24, 1921. *Ga. de Madrid*, Jan. 8, 1922, p. 158.

Finland. Dec. 21, 1921. *Ga. de Madrid*, Jan. 28, 1922, p. 440.

Siam. Aug. 19, 1921. *Ga. de Madrid*, Feb. 8, 1922, p. 556.

Switzerland. Dec. 27, 1921. *Ga. de Madrid*, Jan. 22, 1922, p. 345.

MONEY ORDERS. Rome, May 26, 1906.

Adhesion:

Danzig. *B. I. I. I.*, Jan. 1922, p. 169.

Serb, Croat, Slovene State. *Monit.*, Feb. 1, 1922, p. 1031; *Ga. de Madrid*, Jan. 18, 1922, p. 303.

MOTOR VEHICLES, International Circulation of, Paris, Oct. 11, 1909.

Adhesion:

Norway. Dec. 19, 1921 (in effect May 1, 1922). *J. O.*, Jan. 21, 1922, p. 954; *E. G.*, Jan. 13, 1922, p. 8.

NAVAL LIMITATION TREATY. Washington, Feb. 6, 1922.

Signatures:

France, Italy, Great Britain, Japan, United States. Text: *67th Cong. 2d sess. Senate Doc. 124; Cur. Hist.*, Mar. 1922, 15: 1017.

NAVIGABLE WATERWAYS AND PROTOCOL. Barcelona, Apr. 20, 1921.

Ratification:

Albania, Oct. 8, 1921. *L. N. T. S. (annex) III*, 1, p. 11; *B. I. I. I.*, Jan. 1922, p. 166.

NIGHT WORK OF WOMEN. Washington, Nov. 28, 1919.

Adhesion:

Switzerland. *I. L. O. B.*, Feb. 15, 1922, p. 107.

NIGHT WORK OF YOUNG PERSONS. Washington, Nov. 28, 1919.

Adhesion:

Switzerland. *I. L. O. B.*, Feb. 15, 1922, p. 107.

OPEN DOOR (integrity of China). Washington, Feb. 6, 1922.

Signatures:

Belgium, China, France, Great Britain, Italy, Japan, Netherlands, Portugal, United States. Text: *67th Cong., 2d sess. Senate Doc. 124; Cur. Hist.*, Mar. 1922, 15: 1026.

PACIFIC POSSESSIONS. Declaration and supplement. Washington, Feb. 6, 1921.

Signatures:

France, Great Britain, Japan and United States. Text: *67th Cong., 2d sess. Senate Doc. 124.*

PACIFIC POSSESSIONS TREATY. Washington, Dec. 13, 1921.

Signatures:

France, Great Britain, Japan and United States. Text: *67th Cong., 2d sess. Senate Doc. 124.*

PARCEL POST CONVENTION. Madrid, Nov. 30, 1920.

Adhesion:

Danzig. *B. I. I. I.*, Jan. 1922, p. 169.

Lithuania. Dec. 29, 1921. *Ga. de Madrid*, Feb. 23, 1922, p. 819.

Promulgation:

Belgium. Aug. 20, 1921. *Monit.*, Feb. 17, 1922, p. 1414.

Ratification:

China. Oct. 12, 1921.

Czechoslovak Republic. Nov. 23, 1921. *Ga. de Madrid*, Jan. 22, 1922, p. 345.

Egypt. Dec. 24, 1921. *Ga. de Madrid*, Jan. 8, 1922, p. 158.

Finland. Dec. 21, 1921. *Ga. de Madrid*, Jan. 28, 1922, p. 440.

Siam. Aug. 19, 1921. *Ga. de Madrid*, Feb. 8, 1922, p. 556.

Switzerland. Dec. 27, 1921. *Ga. de Madrid*, Jan. 22, 1922, p. 345.

PARCEL POST CONVENTION. Rome, May 26, 1906.*Adhesion:*

Danzig. *B. I. I. I.*, Jan. 1922, p. 169.

Serb, Croat, Slovene State. *Monit.*, Feb. 1, 1922, p. 1031; *Ga. de Madrid*, Jan. 18, 1922, p. 303.

PERMANENT COURT OF INTERNATIONAL JUSTICE. Optional clause. Geneva, Dec. 16, 1920.*Signature:*

Panama. *L. N. O. J.*, Jan. 1922, p. 5.

PERMANENT COURT OF INTERNATIONAL JUSTICE. Protocol of Signature. Geneva, Dec. 16, 1920.*Ratification:*

Brazil. Nov. 2, 1921.

Japan. Nov. 17, 1921.

Venezuela. Dec. 7, 1921. *L. N. O. J.*, Jan. 1922, p. 5.

PHARMACOPOEIAL FORMULAS FOR DRUGS. Brussels, Nov. 29, 1906.*Notification that convention is binding:*

Austria. Dec. 7, 1921. *E. G.*, Dec. 28, 1921, p. 882; *Ga. de Madrid*, Dec. 24, 1921, p. 1030.

POSTAL CONVENTION. Madrid, Nov. 13, 1920.*Ratification:*

San Salvador. Aug. 8, 1921. *B. I. I. I.*, Jan. 1922, p. 170.

POSTAL SUBSCRIPTIONS TO NEWSPAPERS. Madrid, Nov. 30, 1920.*Adhesion:*

Danzig. *B. I. I. I.*, Jan. 1922, p. 169.

Lithuania. Dec. 29, 1921. *Ga. de Madrid*, Feb. 23, 1922, p. 819.

Ratification:

Czechoslovak Republic. Nov. 23, 1921. *Ga. de Madrid*, Jan. 22, 1922, p. 345.

Egypt. Dec. 24, 1921. *Ga. de Madrid*, Jan. 8, 1922, p. 158.

Finland. Dec. 21, 1921. *Ga. de Madrid*, Jan. 28, 1922, p. 440.

Switzerland. Dec. 27, 1921. *Ga. de Madrid*, Jan. 22, 1922, p. 345.

POSTAL SUBSCRIPTIONS TO NEWSPAPERS. Rome, May 26, 1906.*Adhesion:*

Danzig. *B. I. I. I.*, Jan. 1922, p. 169.

Serb, Croat, Slovene State. *Monit.*, Feb. 1, 1922, p. 1031; *Ga. de Madrid*, Jan. 18, 1922, p. 303.

POSTAL TRANSFERS. Madrid, Nov. 30, 1920.*Adhesion:*

Danzig. *B. I. I. I.*, Jan. 1922, p. 169.

Lithuania. Dec. 29, 1921. *Ga. de Madrid*, Feb. 23, 1922, p. 819.

Ratification:

Czechoslovak Republic. Nov. 23, 1921.

Switzerland. Dec. 27, 1921. *Ga. de Madrid*, Jan. 22, 1922, p. 345.

PROTECTION OF INDUSTRIAL PROPERTY. Paris, Mar. 20, 1883. Revisions.

Brussels, Dec. 14, 1900; Washington, June 2, 1911.

Adhesion:

Czechoslovak Republic. *B. I. I. I.*, Jan. 1922, p. 170.

Ratification:

Cuba. June 1, 1921. *Cuba. B. O. Sec. de Estado*, Sept. 1921, p. 1 (appendix).

PUBLIC HEALTH OFFICE. Rome, Dec. 9, 1907.

Adhesion:

Rumania. *B. I. I. I.*, Jan. 1922, p. 168.

REFRIGERATION, INTERNATIONAL INSTITUTE OF. Paris, June 21, 1920.

Ratification:

Poland. Oct. 28, 1921. *B. I. I. I.*, Jan. 1922, p. 168.

Sweden. Dec. 21, 1921. *J. O.*, Dec. 29, 1921, p. 14190.

REPRESSION OF OBSCENE PUBLICATIONS. Paris, May 4, 1910.

Adhesion:

Curacao and Surinam (Dutch West Indies). Jan. 25, 1922. *E. G.*, Feb. 8, 1922, p. 118; *Monit.*, Feb. 24, 1922, p. 1666.

RIGHT TO A FLAG, OF STATES HAVING NO SEACOAST. Barcelona, Apr. 20, 1921.

Ratification:

Albania. Oct. 8, 1921. *L. N. T. S. (annex) III*, 1, p. 11; *B. I. I. I.*, Jan. 1922, p. 166.

SANITARY CONVENTION. Paris, Jan. 17, 1912.

Ratification:

Brazil. Oct. 12, 1921. *P. A. U.*, Feb. 1922, p. 197.

Guatemala. Nov. 10, 1921. *Monit.*, Jan. 19, 1922, p. 549; *Ga. de Madrid*, Jan. 18, 1922, p. 303.

Haiti. *B. I. I. I.*, Jan. 1922, p. 171.

Uruguay. July 18, 1921. *Monit.*, Jan. 19, 1922, p. 549; *Ga. de Madrid*, Jan. 18, 1922, p. 303.

SERVICE DES RECOUVREMENTS. Madrid, Nov. 30, 1920.

Adhesion:

Danzig. *B. I. I. I.*, Jan. 1922, p. 169.

Lithuania. Dec. 29, 1921. *Ga. de Madrid*, Feb. 23, 1922, p. 819.

Ratification:

China. Oct. 2, 1921.

Czechoslovak Republic. Nov. 23, 1921. *Ga. de Madrid*, Jan. 22, 1922, p. 345.

Egypt. Dec. 24, 1921. *Ga. de Madrid*, Jan. 8, 1922, p. 158.

Switzerland. Dec. 27, 1921. *Ga. de Madrid*, Jan. 22, 1922, p. 345.

SERVICE DES RECouvreMENTS. Rome, May 26, 1906.

Adhesion:

Danzig. *B. I. I. I.*, Jan. 1922, p. 169.

Serb, Croat, Slovene State. *Monit.*, Feb. 1, 1922, p. 1031; *Ga. de Madrid*, Jan. 18, 1922, p. 303.

SUBMARINES AND POISON GAS. Washington, Feb. 6, 1922.

Signatures:

France, Italy, Great Britain, Japan, United States. Text: *67th Cong. 2d sess. Senate Doc. 124; Cur. Hist.*, Mar. 1922, 15: 1025.

TELEGRAPH. St. Petersburg, July 22, 1875.

Adhesion:

Austria. Dec. 17, 1921. *Ga. de Madrid*, Dec. 24, 1921, p. 1030.

Cyrenaica and Tripoli (Italian colonies).

Danzig. *Monit.*, Feb. 1, 1922, p. 1031.

Latvia. Dec. 11, 1921. *E. G.*, Dec. 28, 1921, p. 882; *Monit.*, Dec. 21, 1921, p. 11603.

TELEGRAPH. St. Petersburg, July 22, 1875. Supplement, Lisbon, June 11, 1908.

Adhesion:

Lithuania. *B. I. I. I.*, Jan. 1922, p. 171.

TRADE-MARKS REGISTRATION. Madrid, Apr. 14, 1891. Revision, Brussels, Dec. 14, 1900; Washington, June 2, 1911.

Ratification:

Cuba. June 1, 1921. *Cuba. B. O. Sec. de Estado*, Sept. 1921, p. 1 (appendix).

Czechoslovak Republic. *B. I. I. I.*, Jan. 1922, p. 168.

UNEMPLOYMENT CONVENTION. Washington, Nov. 28, 1919.

Adhesion:

Switzerland. *I. L. O. B.*, Feb. 15, 1922, p. 107.

Ratification:

Denmark. Sept. 24, 1921.

Norway. June 13, 1921. *I. L. O. B.*, Feb. 22, 1922, p. 114, 115.

UNIVERSAL POSTAL UNION. Revision, Madrid, Nov. 30, 1920.

Adhesion:

Danzig. *B. I. I. I.*, Jan. 1922, p. 169.

Lithuania. Dec. 29, 1921. *Ga. de Madrid*, Feb. 23, 1922, p. 819.

Ratification:

Basutoland and Bechuanaland (South Africa). Nov. 8, 1921. *Ga. de Madrid*, Feb. 8, 1922, p. 556.

China. Oct. 12, 1921.

Czechoslovak Republic. Nov. 23, 1921. *Ga. de Madrid*, Jan. 22, 1922, p. 345.

Egypt. Dec. 24, 1921. *Ga. de Madrid*, Jan. 8, 1922, p. 158.

Finland. Dec. 21, 1921. *Ga. de Madrid*, Jan. 28, 1922, p. 440.

Newfoundland. Nov. 15, 1921.

Rhodesia, South. Nov. 8, 1921.

Siam. Aug. 19, 1921. *Ga. de Madrid*, Feb. 8, 1922, p. 556.

UNIVERSAL POSTAL UNION. Rome, May 26, 1906.

Adhesion:

Serb, Croat, Slovene State. *Monit.*, Feb. 1, 1922, p. 1031; *Ga. de Madrid*, Jan. 18, 1922, p. 303.

WHITE PHOSPHORUS IN MATCHES. Berne, Sept. 26, 1906.

Ratification:

Sweden. Feb. 27, 1921. *I. L. O. B.*, Feb. 22, 1922, p. 115.

WHITE SLAVE TRADE. Geneva, Sept. 30, 1921.

Signatures:

Albania, Australia, Austria, Great Britain, Canada, Chile, Esthonia, Italy, Japan, Latvia, Lithuania, New Zealand, Norway, Persia, Portugal, Siam, South Africa and Switzerland. *L. N. M. S.*, Oct. 1921, p. 130.

Belgium, Brazil, Colombia, Costa Rica, Greece. *L. N. M. S.*, Dec. 1921, No. 8, p. 185.

Netherlands, Poland and Rumania. *L. N. M. S.*, Jan. 1922, p. 22.

WHITE SLAVE TRADE. Paris, May 4, 1910.

Adhesion:

Danzig. Aug. 22, 1921.

Monaco (principality). July 2, 1921. *Monit.*, Feb. 11, 1922, p. 1278.

M. ALICE MATTHEWS.

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PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN¹

Alexandria Riots. Minutes of Proceedings and Report of the Military Court of Enquiry. May, 1921. (Cmd. 1527). 6s. 4d.

Argentine Republic. Financial and economic conditions. Report. September, 1921. *Department of Overseas Trade*. 1s. 10½d.

Capitulations in Egypt. Agreement between Great Britain and Portugal relating to the suppression of. Dec. 9, 1920. (Treaty Series, 1921, No. 23). 3d.

Damage to property, rights or interests, compensation in respect of. Agreement between British and German Governments respecting Art. 297 (c) of the Treaty of Versailles of June 28, 1919. Signed at London, Nov. 23, 1921. (Treaty Series, 1921, No. 27). 4d.

Debts, Enemy. Convention between the United Kingdom and France relative to Article 296 of the Treaty of Versailles of June 28, 1919. July 20, 1921. (Treaty Series, 1921, No. 18). 3d.

———. Convention between the United Kingdom and Belgium relative to Article 296 of the Treaty of Versailles of June 28, 1919. July 20, 1921. (Treaty Series, 1921, No. 19). 3d.

Deliveries in kind. Papers relating to the agreement between the French and German Governments concerning the application of Part VIII of the Treaty of Versailles. (Cmd. 1547). 7d.

East India. Telegraphic information, etc., regarding the Moplah Rebellion. Aug. 24 to Dec. 6. (Cmd. 1552). 2s. 2d.

Egypt. Papers respecting negotiations with the Egyptian delegation. (Cmd. 1555). 7d.

Extradition. Treaty between the United Kingdom and Portugal relating to the extradition of fugitive criminals between the Federated Malay States and the territories of the Portuguese Republic. (Treaty Series, 1921, No. 21). 3d.

———. Treaty between the United Kingdom and Portugal relating to the extradition of fugitive criminals between certain British Protectorates and the territories of the Portuguese Republic. (Treaty Series, 1921, No. 22). 3d.

¹ Parliamentary and official publications of Great Britain may be obtained for the amount noted from the Superintendent of Publications, H. M. Stationery Office, Imperial House, Kingsway, London, W. C. 2.

Franco-Turkish agreement. Correspondence between H. M. Government and the French Government respecting the Angora agreement of Oct. 20, 1921. (Cmd. 1570). 10½d.

———. Despatch from H. M. Ambassador at Paris. Oct. 20, 1921. (Cmd. 1556). 4d.

Frontiers. Treaty between the Principal Allied and Associated Powers and Poland, Roumania, the Serb-Croat-Slovene State and the Czecho-Slovak State relative to. (Treaty Series, 1921, No. 20). 4d.

Germany-Great Britain. Amended agreement respecting Article 297 of the Treaty of Versailles of June 28, 1919 (property, rights and interests). Dec. 21, 1920. (Treaty Series, 1921, No. 26). 7d.

Irish settlement. Articles of agreement for a treaty between Great Britain and Ireland. (Cmd. 1560). 4d.

———. Proposals for. Correspondence between H. M. Government and the Prime Minister of Northern Island relating to the. (Cmd. 1561). 4d.

Luxembourg. Economic and commercial conditions. Report. Sept., 1921. *Department of Overseas Trade*. 10d.

Merchant Shipping. Order in Council further postponing the coming into operation of the Merchant Shipping Act, 1914, until July 1, 1922. Nov. 21, 1921. (S. R. & O. 1921, No. 1807). 2d.

Mixed Arbitral Tribunals established by the Treaties of Peace. Collection of decisions. (Published in French). Nos. 6-7, Sept.-Oct., 1921. Foreign Office. 7s. 2½d.

Money Orders. Agreement between the United Kingdom and Brazil for exchange of. Sept. 22, 1921. (Treaty Series, 1921, No. 25). 7d.

Opium. Correspondence respecting the cultivation of, in China. (Cmd. 1531). 5s. 3½d.

Palestine. Reports of the Commission of Inquiry on disturbances in, May, 1921, with correspondence relating thereto. (Cmd. 1540). 1½d.

Panama and Costa Rica. Commercial and economic situation. Report. Sept., 1921. *Department of Overseas Trade*. 1s. 1½d.

Patents, designs and trade-marks. Order in Council applying Sec. 91 of Act of 1907, as amended, to the Free City of Danzig. Nov. 21, 1921. (S. R. & O. 1921, No. 1808). 2d.

Peace Treaties. Rules for examination of witnesses. Nov. 30, 1921. (S. R. & O. 1921, No. 1856. L. 26). 2d.

Peru. Agreement between the United Kingdom and, respecting the mineral property "La Brea y Pariñas," signed at Lima, Aug. 27, 1921. (Cmd. 1571). 4d.

Russia's foreign indebtedness. Correspondence with M. Krassin respecting. (Cmd. 1546). 4d.

Treaties between the United Kingdom and foreign states. Accessions, withdrawals, etc. (Treaty Series, 1921, No. 28). 7d.

Universal Postal Union. Convention of Madrid, Nov. 30, 1920. (Cmd. 1537). 10½d.

———. Agreement for exchange of insured letters and boxes. Nov. 30, 1920. (Cmd. 1538). 7½d.

War Graves in Greece. Agreement between the United Kingdom and Greece respecting. Aug. 27–Sept. 9, 1921. (Treaty Series, 1921, No. 24). 4d.

UNITED STATES²

Alien Property Custodian. Act extending time in which suits may be instituted against, for recovery of money or other property. Approved, Dec. 21, 1921. 1 p. (Public 115). 5c.

———. Report to accompany. Dec. 17, 1921. 2 p. (H. rp. 520). *Interstate and Foreign Commerce Committee.*

Anglo-Japanese Alliance, signed at London, July 13, 1911. (S. doc. 117). *Senate.*

Arbitration. Agreement between Portugal and the United States extending duration of convention of April 6, 1908. Signed at Lisbon, Sept. 14, 1920. 5 p. (Treaty Series 656). *State Dept.*

China. Hearing on bill to authorize incorporation of companies to promote trade in, May 10, 1921. 72 p. *Judiciary Committee.*

———. Treaty between United States and, confirming application of 5 per cent ad valorem duty to American imports. Signed at Washington, Oct. 20, 1920. 19 p. (Treaty Series 657). *State Dept.*

Chinese refugees in United States. Joint resolution permitting certain, to register. Approved Nov. 23, 1921. 1 p. (Pub. res. 29). 5c.

———. Hearings, Nov. 8, 1921. 980 p. (Serial 8). *Immigration and Naturalization Committee.*

———. Report to accompany. Nov. 16, 1921. 3 p. (H. rp. 471). *Immigration and Naturalization Committee.*

Conference on Limitation of Armament. Addresses of the President and Secretary of State of the United States, Nov. 12, 1921, and United States proposal for limitation of naval armament. 27 p. (S. doc. 77). *Senate.*

Diplomatic list, December, 1921. 37 p. *State Dept.*

² Where prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

Exportation of arms and munitions of war. Report to accompany joint resolution to prohibit, to certain countries in which domestic violence exists. Jan. 11, 1922. 3 p. (H. rp. 557). *Interstate and Foreign Commerce Committee*.

Foreign exchange. Depreciated exchange and international trade. 1922. 118 p. il. *Tariff Commission*. Paper, 15c.

Foreign sovereignties. List of, and their rulers, Nov. 3, 1921. 2 p. *Naturalization Bureau*.

Franco-Japanese agreement in regard to Asia, signed at Paris, June 10, 1907. (S. doc. 117). *Senate*.

Haiti and Santo Domingo, Inquiry into occupation and administration of. Hearings. Oct. 4–Nov. 16, 1921. 812 p. *Select Committee*.

Immigration. Hearings on operation of percentage immigration law for five months. 1921. 1003 p. (Serial 9). *Immigration and Naturalization Committee*.

———. List of publications for sale by Superintendent of Documents. (Price list 67, 5th ed.)

———. Annual report of Commissioner General of Immigration, fiscal year 1921. 165 p. *Immigration Bureau*.

Insurance, foreign companies in United States. Executive order revoking order of Dec. 7, 1917, prohibiting business by. (No. 3620). Jan. 17, 1922. *State Dept.*

International Copyright Union. Convention signed at Berne, Sept. 9, 1886; with amendments agreed to at Paris, May 4, 1896. 13 p. (Information Circular 4). *Copyright Office*.

———. Additional protocol to convention of Berlin, Nov. 13, 1908, signed at Berne, Mar. 20, 1914. [English and French]. 2 p. (Information Circular 4B). *Copyright Office*.

Korea's appeal to Conference on Limitation of Armament. 44 p. (S. doc. 109). *Senate*.

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GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

AMERICAN AND BRITISH CLAIMS ARBITRATION TRIBUNAL¹

[Arbitrators: HENRI FROMAGEOT, SIR CHARLES FITZPATRICK, CHANDLER
P. ANDERSON]

IN THE MATTER OF THE FAVOURITE

CLAIM No. 12

Decision rendered December 9, 1921

This is a claim for \$19,443.28 together with interest from November 30, 1894, presented by His Britannic Majesty's Government on behalf of Laughlin McLean, for damages arising out of the seizure of the British sealing schooner *Favourite* by the United States Revenue Cutter *Mohican* on August 24, 1894, and her subsequent detention.

The *Favourite* was a British schooner registered at the Port of Victoria, and her owner was Laughlin McLean, a British subject and master mariner. In 1894, R. P. Rithets and Company, Limited Liability, a body incorporated under the laws of British Columbia, and managers of the said schooner, fitted the vessel out for a sealing voyage.

After procuring a special sealing license, the vessel, manned by Laughlin McLean as master, and a crew of eight men, sailed from Victoria on June 18, 1894. When the vessel sailed from Victoria, she had on board no fire-arms except one double-barrel shotgun, the barrels of which had been cut off to about eleven inches. The presence of this gun was noted on the ship's manifest. The vessel proceeded to Kyuquot on Vancouver Island, where a crew of forty-five Indian hunters was procured.

After the sealing implements on board had been sealed by Her Majesty's Customs Officers and entry made in her log book, the vessel set sail for Behring Sea on July 4, 1894; entered that sea on August 1st; and after breaking the seals on the implements commenced sealing and continued sealing until August 24, 1894. On that date when in longitude 168.30, latitude 54.27, the vessel was boarded and searched by an officer of the United States Revenue Cutter *Mohican*, who made the following entry in the ship's log:

Boarded the 'Favourite.' Found log correctly kept. No violations of regulations, as per log; one shotgun unsealed.

¹ Previous decisions of this Tribunal are printed in this Journal, Vol. 13, pp. 875, 890; Vol. 14, pp. 650-66; Vol. 15, pp. 292-304; Vol. 16, pp. 106-116.

The officer then left the *Favourite*, but returned shortly thereafter and directed the master to go on board the *Mohican*, bringing with him all his papers and the gun, with which direction the master complied. The gun was fired and found to shoot very accurately for a distance of fifty yards. Whereupon the master was informed that the vessel was under seizure, for the following reasons, which are stated in the declaration of seizure:

. . . for violation of article six (6) of the Award of the Tribunal of Arbitration and of that part of section ten (10) of the Act of Congress approved April 6, 1894, which reads:

‘. . . or if any licensed vessel shall be found in the waters to which this act applies, having on board apparatus or implements for taking seals, but forbidden then and there to be used, it shall be presumed that the vessel in the one case and the apparatus or implements in the other was or were used in violation of this act until it is otherwise sufficiently proved.’ (United States Answer, Exhibit 4.)

On August 30, 1894, the Commander of the United States Naval Forces in Behring Sea sent a report to the Secretary of the Navy, in which he stated—

It is more than likely that the shotgun for which the vessel was seized was intended to be used in projecting signal stars, as the barrels were cut off, reducing them to a length of about twelve inches, but it was found after trial, that it could be used to kill seals much beyond the ordinary range of spear throwing.

But whether this was the only intention, or whether there was another to use it for killing seals in case it was allowed for signal purposes, I am not prepared to say; but its possession is clearly in violation of the provisions contained in sec. 10 of the Act of Congress approved April 6, 1894. (United States Answer, Exhibit 7.)

To this report were annexed the reports of the officers of the *Mohican* with reference to the seizure of this vessel.

The *Favourite* was immediately sent in the custody of a prize crew from the *Mohican* to Unalaska, and on August 27th was delivered to the commanding officer of the British cruiser *Pheasant* at Unalaska, who ordered the *Favourite* to report to the Collector of Customs at Victoria, B.C.

Upon her arrival at Victoria, the *Favourite* was released by order of Rear Admiral Stevenson, the British Naval Commander in Chief on the Pacific Station.

The Government of His Britannic Majesty contend that the seizure of the *Favourite* was illegal and unjustifiable, as neither the Behring Sea Award, nor the regulation made therein or thereunder, nor any legislation or other legal or competent authority, justified or authorized the seizure of the vessel in the circumstances.

The United States Government, on the other hand, denies all liability; first, because its officers were acting on behalf of the British Government and not of the United States Government; second, because there was the

bona fide belief that an infraction of the Behring Sea Award Act, 1894, had been committed; third, because the release of the *Favourite* by the British naval authorities without a regular prosecution before a court rendered it impossible to determine in the only competent way whether the seizure was illegal; fourth, because, even supposing the seizure was made without probable cause, the liability to pay damages would rest upon His Britannic Majesty's Government; fifth, because the detention of the vessel from and after August 27, 1894, the date of its delivery to the commanding officer of the British cruiser *Pheasant* at Unalaska, was due to the action of the British authorities; and sixth, because there is no basis in law or in fact for the measure of damages claimed.

I. As to the legality of the seizure and liability of the United States:

On the facts in this case, and for the reasons stated in the award of this Tribunal in the case of the *Wanderer*, Claim No. 13, delivered December 9, 1921, this Tribunal holds:

(1) That the seizure of the British ship *Favourite* by United States officers under section 10 of the Act of Congress approved April 6, 1894, was an improper exercise of the authority conferred upon them by the British Government under the Behring Sea Award Act of 1894, and the order-in-council of April 30, 1894;

(2) That the good faith of the United States naval officers is not questioned, their error in judgment being caused by the provisions of the aforesaid section 10, for which section and the error of judgment committed by its agents thereunder, the United States Government is liable;

(3) That inasmuch as the offence of the *Favourite* did not make her liable to forfeiture, the British Government were under no international or legal duty to proceed against the ship through their Admiralty Courts, and not to release her by a merely administrative decision; and

(4) That the British authorities, rather than the United States authorities were responsible for the detention of the ship after she was delivered to them on August 27th.

The United States Government, therefore, is liable only for the three days of her detention, namely from August 24th to August 27th, during which she was under the control of officers of the United States, and the three additional days which should be allowed for the vessel to return to the sealing grounds if she had been released at Unalaska on August 27th.

II. As to the amount of damages:

The damages claimed on behalf of the claimant, amounting to \$19,443.28, as set forth in the British Memorial, are based upon "a reasonable estimate of the sums which the owners would have received as the proceeds of the voyage, if it had been completed, together with interest thereon," or, in the alternative, the said amount is claimed "by reason of the loss of time,

wages, provisions and outfit for the remainder of the season after the 24th of August, 1894."

It is shown in the British Memorial that during the period between August 1st and August 24th, the *Favourite* had taken 1247 seal skins, the net value of which, as shown by their sale in London was at the rate of \$8.62 per skin. This would make the average daily catch 52 skins, equivalent to \$448.24 in value. It does not necessarily follow that the *Favourite* would have continued to take seal skins at this daily average during the remainder of her voyage, but the Tribunal is of the opinion that in view of her hunting equipment consisting of nineteen canoes and forty-five Indian hunters and a crew of eight white men, an estimated allowance of 52 skins per day as an average is not excessive. The Tribunal, therefore, considers that the prospective profits for these six days should be estimated at \$448 per day, making \$2,688 in all, and fixes this amount as damages for her loss of profits with \$500 additional for the trouble occasioned by her illegal detention.

As to interest:

The British government in their oral argument admit that the 7 per cent interest claimed in their memorial must be reduced to 4 per cent in conformity with the provisions of the Terms of Submission.

It appears from a letter addressed by the Marquis of Salisbury to the British Ambassador in Washington on August 16, 1895, and handed by him to the Secretary of State of the United States on September 6, 1895, that this was the first presentation of a claim for compensation in this case. Therefore, in accordance with the Terms of Submission, section IV, the Tribunal is of the opinion that interest should be allowed at 4 per cent from September 6, 1895, to April 26, 1912, on \$2,688 damages allowed for loss of profits.

FOR THESE REASONS

This Tribunal decides that the Government of the United States shall pay to the Government of His Britannic Majesty, on behalf of the claimants, the sum of Three thousand one hundred and eighty-eight dollars (\$3,188) with interest on Two thousand six hundred and eighty-eight dollars (\$2,688) thereof at four per cent (4%) from September 6, 1895, to April 26, 1912.

The President of the Tribunal,

HENRI FROMAGEOT.

IN THE MATTER OF THE WANDERER

CLAIM No. 13

Decision rendered December 9, 1921

This is a claim presented by His Britannic Majesty's Government for \$17,507.36 and interest from November, 1894, for damages arising out of the seizure and detention of the British sealing schooner *Wanderer*, and her officers, men and cargo, by the United States Revenue Cutter *Concord* on June 10, 1894.

The *Wanderer*, a schooner of 25 tons burden was a British ship registered at the Port of Victoria, B. C.; her owner was Henry Paxton, a British subject and a master mariner. On the 5th of January, 1894, she was chartered for the sealing season of 1894 by the said Paxton to Simon Leiser, a naturalized British subject. Under the terms of the agreement, Leiser had to provision and equip the vessel, and Paxton was appointed as master and to be paid as such; the net profits of the venture were to be divided between them in a fixed proportion.

On January 13, 1894, the *Wanderer* left the Port of Victoria, B. C., and sailed on her sealing voyage in the North Pacific Ocean. She was manned by Paxton as master, one mate and fourteen hunters, including twelve Indians (all of them British subjects), and two Japanese, and appears to have been equipped, at the time of her seizure, with five canoes and one boat for sealing.

On June 9, 1894, at 8.30 A.M. when the vessel was in latitude 58° north and longitude 150° west, and heading west south-west, en route for Sand Point, she was hailed by the United States Revenue Cutter *Yorktown*, and boarded by an officer who, acting under instructions hereinafter referred to, searched the schooner, placed her sealing implements under seal, and made an entry in the ship's log stating the number of seal skins found on board to be 400.

On the same day, about seven hours later, i. e., at about 4 P.M., the vessel being in latitude 58° 21' north and longitude 150° 22' west, heading north, wind astern, she was hailed by another United States Revenue Cutter, the *Concord*, and boarded and searched. During his search the officer discovered hidden on board and unsealed one 12-bore shot gun, 39 loaded shells and 3 boxes primers, one of which was already opened. The United States naval officer took possession of the gun and shells and made the following entry in the ship's log:

Lat. 58.21, N. Long. 150.22 W. June 9th, 1894.

I hereby certify that I have examined the packages of ammunition, spears, and guns referred to in the preceding page, and found all skins intact, counted the seals and found the number to be 400.

E. F. LEIPER,
Lieut. U.S.N., U.S.S. "Concord."

Lat. 58.21 N., Long. 150.22 W., June 9th, 1894.

On further search of the vessel I found concealed on board 12-bore shot-gun, 39 loaded shells and three boxes primers, one of which was opened already.

E. F. LEIPER,
Lieut. U.S.N., U.S.S. "Concord."

As the sea was rough, the commanding officer of the *Concord* at the request of the master of the *Wanderer* took her in tow to St. Paul, Kadiak Island. She arrived there towed by the *Concord* on June 10th, at 10 A.M. and the tow line being cast adrift, was about to make sail for a safe anchorage when the *Concord* without any warning ordered her to stand by and to anchor nearby. It appears also from the *Concord's* log that in the afternoon a committee of inspection went on board the *Wanderer* to ascertain whether she was seaworthy and that at the same time the master was informed that he was to be seized. At 4 P.M. the commanding officer of the *Concord*, Commander Goodrich, advised the master that his ship and the ship's papers had actually been seized.

The ordinary declaration of seizure was made and notice given that the seizure had been made for the following reasons:

subsequent to the warning and certificate aforesaid arms and ammunition suitable to the killing of fur seals were discovered concealed on board . . . and whereas the possession of such unsealed arms and ammunition was in contravention of the Behring Sea Award Act, 1894, Clause I, par. 2, and Clause III, par. 2, as well as of Section 10 in the President's Proclamation . . . (United States Answer, Exhibit 5.)

The master of the *Wanderer* protested against this declaration.

On June 16, Commander Goodrich sent a report to the Commander of the United States Naval Force in the Behring Sea (United States Answer, Exhibit 4) in which he stated:

My action is based on the last half of Sec. 10 of the Act of Congress April 6; the next to the last sentence in the "Regulations Governing Vessels, etc;" the Behring Sea Award Act, and Pars. 1 and 3 of your confidential instructions of May 13th.

To this report were annexed the statements of the officers and men of the *Concord*, who took part in the search, all of which referred merely to the discovery on board of a gun and ammunition hidden and unsealed. On July 1st, the *Wanderer* arrived at Dutch Harbor, Unalaska, where she remained under seizure until August 2d, when she was handed over to her Britannic Majesty's ship *Pheasant*. (United States Answer, Exhibits 12, 13.)

On August 6th the schooner was sent to Victoria, B. C., and after her arrival there, she was released by order of the British Naval Commander in Chief on the Pacific Station. (British Memorial, p. 10.) The evidence

does not disclose how long the *Wanderer* was detained at Victoria by the British authorities before her release was ordered.

The Government of His Britannic Majesty contend that the seizure of the *Wanderer* was illegal; that the alleged reason for it was wholly insufficient, and that the Government of the United States is responsible for the act of its naval officers.

The United States Government, on the other hand, denies all liability; first, because its officers were acting on behalf of the British Government and not of the United States Government; second, because there was a *bona fide* belief that an infraction of the Behring Sea Award Act, 1894, had been committed; third, because the release of the *Wanderer* by the British naval authorities without a regular prosecution before a court rendered it impossible to determine in the only competent way whether the seizure was illegal; fourth, because even supposing the seizure was made without probable cause, the liability to pay damages would rest upon His Britannic Majesty's Government; fifth, because the detention of the vessel after July 1, 1894, the date when she arrived at Dutch Harbor, Unalaska, was due to the failure of the British naval authorities to send a vessel there to take charge of the schooner; and sixth, because there is no basis in law or in fact for the measure of damages.

I. As to the legality of the seizure and liability of the United States:

The fundamental principle of the international maritime law is that no nation can exercise a right of visitation and search over foreign vessels pursuing a lawful avocation on the high seas, except in time of war or by special agreement.

The *Wanderer* was on the high seas. There is no question here of war. It lies therefore on the United States to show that its naval authorities acted under special agreement. Any such agreement being an exception to the general principle, must be construed *stricto jure*.

At the time of the seizure, as the result of the Arbitral Award of Paris, August 15, 1893, and the Regulations annexed thereto, there was in operation between the United States and Great Britain a conventional régime the object of which was the protection of the fur seals in the North Pacific Ocean.

By the Award, it was decided *inter alia*:

that concurrent regulations outside the jurisdictional limits of the respective governments are necessary and that they should extend over the water hereinafter mentioned.

By the Regulations above referred to, it was provided that the two Governments should forbid their citizens and subjects, first, to kill, capture, or pursue at any time and in any manner whatever, the fur seals within a zone of sixty miles around the Pribilof Islands; and second, to kill, capture and

pursue fur seals in any manner whatever from the first of May to the 31st of July within the zone included between latitude 35° north and the Behring Straits, and eastward of longitude 180°.

Furthermore the same Regulations provide:

Article 6. The use of nets, firearms and explosives shall be forbidden in the fur-seal fishing. This restriction shall not apply to shotguns when such fishing takes place outside of Behring's Sea during the season when it may be lawfully carried on.

To comply with the Award and Regulations, an Act of Congress was passed in the United States on April 6, 1894. This Act provided:

Sec. 10. . . . if any licensed vessel shall be found in the waters to which this Act applies, having on board apparatus or implements suitable for taking seals, but forbidden then and there to be used, it shall be presumed that the vessel in the one case and the apparatus or implements in the other was or were used in violation of this Act until it is otherwise sufficiently proved.

On April 18, 1894, instructions were given to the United States naval authorities, according to which—

Par. 6. Any vessel or person . . . having on board or in their possession apparatus or implements suitable for taking seal . . . you will order seized. (United States Answer, Exhibit 20.)

On their side the British Government passed an Act dated April 23, 1894, providing:

Sec. 1. The provisions of the Behring Sea Arbitration Award . . . shall have effect as if those provisions . . . were enacted by this Act. (United States Answer, Exhibit 17.)

The British Act further provides:

Sec. 3. par. 3. An order in council under this act may provide that such officers of the United States of America as are specified in the order may, in respect of offences under this act, exercise the like powers under this act as may be exercised by a commissioned officer of Her Majesty in relation to a British ship. . . . (United States Answer, Exhibit 17.)

As may be observed the United States Act and the instructions to its naval authorities did not follow the wording of the Award Regulations exactly, and Her Majesty's Government drew attention to the variance, in a letter addressed by their Ambassador in Washington to the Secretary of State on April 30, 1894:

. . . I am directed to draw your attention to paragraph 6 of the draft instructions, so far as it relates to British vessels. The paragraph requires modification in order to bring it, as regards the powers to be exercised by United States cruisers over British vessels, within the limits prescribed by the British order in Council conferring such powers.

The Earl of Kimberly desires me to state to you that the order in council which is about to be issued to empower United States cruisers to seize

British vessels will only authorize them to make seizures of vessels contravening the provisions of the British act of Parliament, or, in other words, the provisions of the award.

There is no clause in the British act corresponding with section 10 of the United States act of Congress. United States cruisers can not therefore seize British vessels merely for having on board, while within the area of the award and during the close season, implements suitable for taking seal. (United States Answer, Exhibit 21.)

Meanwhile and on April 30, 1894, a British Order in Council was issued providing:

Par. 1. The commanding officer of any vessel belonging to the naval or revenue service of the United States of America, and appointed for the time being by the President of the United States for the purpose of carrying into effect the powers conferred by this article, the name of which vessel shall have been communicated by the President of the United States to Her Majesty as being a vessel so appointed as aforesaid, may . . . seize and detain any British vessel which has become liable to be forfeited to Her Majesty under the provisions of the recited act, and may bring her for adjudication before any such British court of admiralty as is referred to in section 103 of "The Merchant Shipping Act, 1854" . . . or may deliver her to any such British officer as is mentioned in the said section for the purpose of being dealt with pursuant to the recited act. (United States Answer, Exhibit 18.)

It appears from the documents that an exchange of views took place between the two Governments in order to arrive at some agreement as to the regulations. On May 4, 1894, an agreement was reached. The previous United States instructions, dated April 18, 1894, were revoked (53 Cong. 2d Sess. Senate Ex. Doc. No. 67, p. 228); a memorandum of the agreement regulations was exchanged (*Ibid.*, p. 120; United States Answer, Exhibit 23), and those regulations were sent by the United States Government to their naval officers (*Ibid.*, pp. 126, 226, 228). From these new regulations of May 4, 1894, the provision concerning the possession of arms was omitted.

In these circumstances, the legal position in the sealing zone at the time of the seizure of the *Wanderer* may be summarized as follows: The provisions of the Award in their strict meaning, and those provisions only, had been agreed upon as binding upon the vessels, citizens and subjects of the two countries; and it was only for contravention of those provisions that the United States cruisers were authorized to seize British vessels.

Such being the state of the law, the question to be determined here is whether or not the *Wanderer* was contravening the aforesaid provisions so as to justify her seizure.

The declaration of seizure does not allege that the *Wanderer* was killing or pursuing or had killed or pursued fur seals within the prohibited time or zone, but that she was discovered to have certain arms and ammunition unsealed and hidden on board. The offense alleged was the possession of such arms and ammunition (United States Answer, Exhibit 5). The same

charge is brought by the notice of the declaration of seizure " . . . whereas in thus having concealed arms and ammunition on board, you were acting in contravention . . ." (United States Answer, Exhibit 6.) In the report of the United States authorities, a report of a merely domestic character, the same view is taken. It is explained by the repeated references to the above quoted Section 10 of the United States Act of April 6, 1894.

Inasmuch as it was only *use* and not the mere *possession* of arms and ammunition which was prohibited by the Paris Award and Regulations, it is impossible to say that the *Wanderer* was acting in contravention of them.

Even if it be admitted that in case of contravention the United States officers were empowered to seize on behalf of Her Majesty's Government under the British Act, it is clear that such a delegation of power only gave them authority to act within the limits of that Act, and as the seizure was made for a reason not provided for by that Act, it is impossible to say that in this case they were exercising that delegated authority.

The *bona fides* of the United States naval officers is not questioned. It is evident that the provisions of section 10 of the Act of Congress constituted a likely cause of error. But the United States Government is responsible for that section, and liable for the errors of judgment committed by its agents.

Further, contrary to the contention of the United States Answer, it must be observed that Her Majesty's Government were under no international or legal duty to proceed against the ship through their Admiralty courts, and not to release her by a merely administrative decision. Under section 103 of the British Merchant Shipping Act, 1854 (United States Answer, p. 65), it is only when a ship has become subject to forfeiture that she may be seized and brought for adjudication before the Court, and as the ship in this case was not considered subject to forfeiture, the aforesaid provision had no application.

The United States Government points out that the Government of Her Britannic Majesty were held responsible by Her Majesty's Courts in certain cases of seizures made by the United States authorities under the Paris Award Act, even when those seizures were held to be unjustified in the circumstances. But it must be observed that in those cases the seizure was for acts, which if they had been proved would have constituted a contravention justifying the seizure; in this case on the contrary the seizure was made for an act, namely, the possession of arms, which did not constitute any contravention justifying the seizure. In other words, in the aforesaid cases, it was not contested that the United States authorities acted within the limits of the powers entrusted to them, but it was decided that their action was not justified by the facts.

The contention that the British Government is liable for the detention of the *Wanderer* from and after July 1, 1894, the date when she arrived at

Unalaska, until she was delivered to the *Pheasant*, because of the delay of that vessel in reaching that port, is not well founded. According to the power delegated to them under the British Act and Order in Council, the United States naval authorities in case of seizure had either to bring the vessel before a British court or to deliver her to the British naval authorities. Here the United States officers neither brought the *Wanderer* before a British court, nor delivered her to a British naval authority, before the 2nd of August.

It has been contended by the United States that although the *Wanderer* was sent to Dutch Harbor, Unalaska, about 500 miles to the west of St. Paul, that is to say in exactly the opposite direction from where a British court could be found, nevertheless, it is shown by a letter of the commanding officer of the American fleet, dated June 13, 1894, that he had been informed that a British man-of-war would be sent to Unalaska about the time the *Wanderer* arrived there. As to this contention, it must be observed that the said letter is dated three days after the *Wanderer* was sent to Unalaska, which was on June 10th. Furthermore, it appears from a letter of the commanding officer of the United States fleet addressed to the Secretary of State on May 28, 1894, i. e., twelve days before the seizure, that that officer having been informed by H. M. S. *Pheasant* that she was the British vessel ordered to cooperate in carrying out the concurrent regulations, had himself suggested to the commanding officer of the *Pheasant* that he should make his headquarters at Sitka until June 12th, at St. Paul, Kadiak Island, until June 30th, and after that at Unalaska "as this seems to be the best arrangement that could be made for turning over British sealers that may be seized. . . ." This arrangement was communicated to the American fleet on the same day by a circular dated May 28, 1894 (Ex. Doc., 264).

Consequently there is nothing to show that on June 10th, the date when the *Wanderer* was sent to Unalaska, the United States naval authorities believed the British man-of-war would be at Unalaska at the date of the schooner's arrival.

There still remains to be considered the question of the liability of the United States for damages arising after the *Wanderer* was delivered on August 2nd (United States Answer, Exhibit 13) to Her Britannic Majesty's ship *Pheasant* at Dutch Harbor, Unalaska.

The above mentioned order-in-council of April 30, 1894, which authorized American officers to seize British sealers for contravention of the Behring Sea Award Act of 1894, provides that vessels seized by such officers either may be brought for adjudication before a British Court of Admiralty, as specified in section 103 of the Merchant Shipping Act of 1854, or may be delivered "to any such British officer as is mentioned in the said section for the purpose of being dealt with pursuant to the recited Act." In this case the latter course was followed, and the *Wanderer* was delivered to the commander of the *Pheasant* on August 2nd, and was ordered by him to proceed

forthwith to Victoria, B. C., where there was a British Court having authority to adjudicate in the matter. Upon the arrival of the *Wanderer* there, the customs officers declined to take proceedings against her, and the Admiral in charge of Her Britannic Majesty's ships ordered that she be released from custody.

This Tribunal having held that Her Britannic Majesty's Government were under no international or legal duty to proceed against this ship, and that the release of the ship by administrative action was justified under section 103 of the Merchant Shipping Act of 1854, it follows that the British authorities, rather than the United States authorities, were responsible for the detention of the vessel after she was delivered to their charge on August 2nd. The authority conferred by the above-mentioned order-in-council upon the American officer who seized this vessel was to exercise "the like powers under the Behring Sea Award Act of 1894 as may be exercised by a commissioned officer of Her Majesty in relation to a British ship." In other words, the powers of the British officer and the American officer in relation to the detention of this ship were identical, and consequently the Tribunal having held that the detention of the vessel by the American officer was not justified, must likewise hold that her detention by the British officer was equally unjustified. Inasmuch as the British officer was at liberty to release the vessel, and as the United States is not responsible for her unjustifiable detention by a British officer, the United States is responsible only for damages for detaining the vessel until the 2nd of August.

II. As to the consequences of liability and the amount of damages:

The provisions of Article 2 of the Award of the Fur Seal Arbitration Tribunal of 1893, which was adopted by the legislative enactment by the Government of Great Britain and of the United States in 1894, are as follows:

The two Governments shall forbid their citizens and subjects, respectively, to kill, capture, or pursue in any manner whatever, during the season extending, each year, from the 1st of May to the 31st of July, both inclusive, the fur seals on the high sea, in the part of the Pacific Ocean, inclusive of the Behring Sea, which is situated to the north of the 35th degree of north latitude, and eastward of the 180th degree of longitude from Greenwich.
... (United States Answer, Exhibit 16.)

It appears, therefore, that from the 10th of June, when this vessel was seized, until the 31st of July, she was prohibited by these provisions from sealing operations in the North Pacific within the limits described, which were fixed by the Award of the Arbitration Tribunal as the limits which included the entire area within which fur sealing might profitably be engaged in during that period, and she was within those limits when seized. It follows that during the part of her detention for which the United States is responsible, the only period during which she was unlawfully prevented

from sealing by the United States authorities, was the period covered by the first two days in August, which followed the termination of the close season on the 31st of July, as fixed by the Award, and the three additional days which should be allowed for the vessel to reach the sealing grounds, if she had been released at Dutch Harbor on August 2nd.

The damages claimed by the claimants as set forth in the British Memorial are based upon "a reasonable estimate of the sums which the owners would have received as the proceeds of the voyage if it had been completed, together with interest thereon," and these sums include only the value of the estimated catch for the season if the schooner had not been seized, damages for detention of master and crew, the value of provisions and alleged injuries to guns. It does not appear that any damages were claimed for the detention of the ship during the period prior to the 1st of August, and it is clear that no pecuniary loss on account of any of the items mentioned was suffered by the detention of the ship, or the master and crew during that period, because it is evident from the surrounding circumstances that it was her purpose to occupy that period in proceeding to Behring Sea, and remaining in that vicinity until the open season began on the 1st of August. The value of the prospective catch for the whole season is estimated by the claimants at \$9,080.86 on the basis of 950 skins at 39 shillings, 3 pence per skin.

It is shown by the documents that the average catch during the same season of other schooners similarly equipped was about 96 skins per boat or canoe, or 43 skins per man. The *Wanderer* had one boat and five canoes and fourteen men, which would make 576 skins reckoning by boats and canoes, or 602 skins reckoning by men, or striking a mean, 589 skins.

It has been shown that the average value of skins was about \$8.60 per skin in 1894. Consequently on these figures the loss for the season may be estimated at about \$5,000.

As damages are claimed in this case by the British Government not only for the owners but also for the officers and men who by the seizure were deprived of their earnings per skin, no deduction for wages should be made from the aforesaid value per skin.

The exact duration of the season is not stated, but it appears from the evidence that it extended through the month of August and the greater part of September, covering about forty days, so that the average value of the catch per day can be estimated at about \$125. The evidence offered as a basis for this estimate is indefinite and inconclusive, but the Tribunal is of the opinion that taking into consideration the illegal detention of this vessel by the United States authorities for a period of nearly two months, it is justified in adopting a liberal estimate of the profits which she would have made on the five sealing days during which she might have hunted, if she had not been unlawfully detained by the United States until August 2nd. This Tribunal, therefore, considers that the damages for this detention

should be fixed at \$625 for her loss of profits, and \$1,000 for the trouble occasioned by her illegal detention.

As to damages for the detention of the master, mate and men, there is no evidence sufficient to support these claims.

A sum of \$120 is also claimed for injury to guns; but no evidence is afforded sufficient to support this item and it must be disallowed.

As to the sum of \$126.50, the amount of certain provisions, which are said to have been supplied and purchased from H. M. S. *Pheasant*, there is no evidence sufficient to support it.

On the other hand, it appears from a letter dated August 5, 1894, addressed by the commanding officer of the American fleet to the Secretary of the Navy that some provisions valued at \$21.95 supplied by the U. S. S. *Concord* to the *Wanderer* were not paid for. (United States Answer, Exhibit 13.) This sum then must be deducted from the total amount of damages to be paid by the United States Government.

As to interest:

The British Government in their oral argument admit that the 7 per cent interest claimed in their memorial must be reduced to 4 per cent in conformity with the provisions of the Terms of Submission.

It appears from a letter addressed by the Marquis of Salisbury to the British Ambassador in Washington on August 16, 1895, and handed by him to the Secretary of State on September 6, 1895, that this was the first presentation of a claim for compensation in this case. Therefore, in accordance with the Terms of Submission section IV, the Tribunal is of the opinion that interest should be allowed at 4 per cent from September 6, 1895, to April 26, 1912, on the \$625 damages allowed for loss of profits less \$21.95 for the provisions supplied by the U. S. S. *Concord*, namely on \$603.05.

FOR THESE REASONS

The Tribunal decides that the Government of the United States shall pay to the Government of His Britannic Majesty for the claimants the sum of One thousand six hundred and three dollars and five cents (\$1,603.05), with interest at four per cent (4%) on Six hundred and three dollars and five cents (\$603.05) thereof, from September 6, 1895 to April 26, 1912.

The President of the Tribunal,

HENRI FROMAGEOT.

IN THE MATTER OF THE DAVID J. ADAMS

CLAIM NO. 18

Decision rendered December 9, 1921

The United States Government claims from His Britannic Majesty's Government the sum of \$8,037.96 with interest thereon from May 7, 1886, for loss resulting from the seizure of the schooner *David J. Adams* by the Canadian authorities in Digby Basin, Nova Scotia, on May 7, 1886, and the subsequent condemnation of the vessel by the Vice-Admiralty Court at Halifax on October 20, 1889.

I. As to the facts:

The *David J. Adams*, a fishing schooner (United States Memorial, p. 316), of 66 register tonnage, owned by Jesse Lewis, an American citizen of Gloucester, Massachusetts, United States of America; Alden Kinney, likewise an American citizen, being the master, sailed from Gloucester on or about April 10, 1886, for cod and halibut fishing on the Western Banks, lying to the southeast of Nova Scotia, in the North Atlantic Ocean, with special instructions to the master not to enter into Canadian ports. (United States Memorial, pp. 182, 185, 248.) After remaining on the Banks for about 12 days, the vessel proceeded to Eastport, Maine, United States of America, to obtain bait and other supplies, but being unable to procure at Eastport her needed supply of bait, she proceeded to Nova Scotia's shore, namely, to Annapolis Basin (United States Memorial, pp. 249, 309). On the morning of May 6, 1886, contrary to the owner's instructions, she entered Annapolis Basin, and when entering the Gut, she heard from another boat that there was bait at Bear River. (United States Memorial, p. 309.) Then she anchored above the mouth of Bear River (United States Memorial, pp. 269, 273, 288, 309). While the schooner was lying at anchor, the Master with some men of the crew went on shore, and addressing a Canadian fisherman, Samuel D. Ellis, he said that he wanted to know whether he had any bait, and on the affirmative answer of Ellis, he asked him whether he would sell it to him.

On the refusal of Ellis, because it was against the law and he could not sell to Americans, Kinney replied "that the schooner had been an American, but the English had bought her." Having been told by Ellis that the price was \$1.00 a barrel, he offered \$1.25, and so he bought four barrels of herring which had been caught the same morning. (United States Memorial, p. 275.) The same Kinney addressed, likewise, a certain Robert Spurr; he asked him who owned the bait, and the said Robert Spurr, showing about four and a half barrels of bait in a boat anchored in a weir, said it belonged to his father, William Spurr, and to his partner, George Vroom. The master of the *David J. Adams* bought those four and a half barrels and engaged the next morning's catch at the rate of \$1.00 per barrel. On May

7th, as she was preparing to leave Digby Basin, the schooner was boarded by the chief officer of the Canadian cruiser *Lansdowne*, who asked the master what he was in for and if he had any bait on board; the master answered that he was in to see his people (United States Memorial, pp. 253, 289), and that he had no bait on board; then the said officer told Kinney that he had no business to be there; he asked him if he knew the law, and being answered affirmatively (United States Memorial, pp. 254, 258), he ordered the said master to proceed beyond the limits and returned to his cruiser. Being ordered by the Commander of the cruiser to board the schooner again and to examine her thoroughly, the same officer went alongside the schooner and told the master it was reported that he had bought bait. On the formal denial of Kinney, the officer proceeded to make a search, and having found bait, apparently perfectly fresh, was told by the master it was ten days old. Leaving the schooner again, the officer went to report to his commanding officer, and having so reported was ordered to return to the schooner with Captain Charles T. Dakin of the *Lansdowne*, who after putting the same questions and having received the same denials from the captain, returned to the *Lansdowne*, once more leaving the schooner free. But on their report the Commanding Officer of the Canadian Cruiser ordered the schooner to anchor close to the *Lansdowne*. The following day, *i. e.*, on May 8th, the schooner was declared to be seized. (United States Memorial, pp. 253, 254, 259.)

On the same day, the vessel was removed to St. Johns, New Brunswick, and three days later she was taken back again to Digby.

On May 7th, a process in an Admiralty suit against the schooner was served on the vessel for (1) violation of the convention between Great Britain and the United States, signed at London on October 20th, 1818, and (2) for violation of the Act of the British Parliament, being Chapter 38 of the Acts passed in the 59th year of the reign of his late Majesty George III, and being entitled, "An Act to enable His Majesty to make regulations with respect to the taking and curing of fish in certain parts of the coasts of Newfoundland and Labrador, and in his said Majesty's other possessions in North America, according to a Convention made between His Majesty and the United States of America," and (3) for violation of Chapter 72 of the Acts of the Parliament of the Dominion of Canada made and passed in the year 1883, and entitled, "The Customs Act, 1883," and the Acts of the said Parliament of the Dominion of Canada in amendment thereof. (United States Memorial, p. 202.)

In the meantime, the Secretary of State of the United States having been informed by the shipowner of these occurrences, the American Consul General at Halifax, acting on the instructions of the Secretary of State, proceeded to Digby to inquire into the facts. He seems to have encountered some difficulties in ascertaining what were the grounds on which the Canadian authorities were basing the seizure (United States Memorial, pp. 39,

42, 43, 47), and it appears from the documents (United States Memorial, pp. 78, 79, 89), that the charges against the schooner were alternatively said by the Canadian authorities to be a violation of the Fisheries Stipulations in force between the British Government and the United States Government, and of the Canadian Fisheries Acts, and a violation of the Canadian Customs Acts. On the other hand, the Consul General must have had some difficulty in ascertaining the true facts, since in the master's affidavit of May 13th, is the solemn and misleading declaration that he did not buy bait when anchored above Bear River. (United States Memorial, p. 44.)

A diplomatic correspondence ensued with the United States Government protesting against what it contended to be a misinterpretation of the Treaty of 1818 by the Canadian Government and His Britannic Majesty's Government contending that, as the case of the *David J. Adams* was still *sub judice*, diplomatic action was to be suspended for the time being. After having been somewhat delayed, by reason of certain negotiations which took place in 1886-1888 between the two Governments concerning fisheries, the action for forfeiture of the *David J. Adams* and her cargo was decided on October 28, 1889, by the Vice-Admiralty Court at Halifax. The ship and her cargo were condemned as forfeited to Her Britannic Majesty for breach and violation of the Convention and the various Acts relating thereto, and ordered to be sold at public auction, and expressly on the following motives (United States Memorial, p. 326):

That the said vessel [*David J. Adams*] . . . did on or about the 6th day of May, A. D. 1886, enter into Annapolis Basin, . . . and that the said vessel *David J. Adams* and those on board the said vessel did so enter for purposes other than the purpose of shelter or of repairing damages, of purchasing wood or of obtaining water, and that the said vessel *David J. Adams* and those on board of the said vessel did within three marine miles of the shores of the said Annapolis Basin on the said 6th day of May A. D. 1886, prepare to fish within the meaning of the Convention between His late Majesty, George III, King of the United Kingdom . . . and the United States of America, made and signed at London on the 20th day of October, A. D. 1818, and within the meaning of . . . [British Act 59, George III, c. 38, and Canadian Acts, 31 Vict., Chap. 61 (1868), 33 Vict., Chap. 15 (1870), 34 Vict., Chap. 23 (1871)], . . . and contrary to the provisions of the said Convention and of the said several Acts, and that the said vessel *David J. Adams* and her cargo were thereupon seized within three marine miles of the shores of the Annapolis Basin. . . .

It is not contested that no appeal was taken against that decision.

Now this case is presented before this Tribunal under the following conditions:

By reason of certain conditions of fact and for various other considerations, while by the Treaty of London of October 20th, 1818, the United States renounced the liberty of fishing in Canadian waters, except on certain specified coasts, the access of American fishermen to the British territorial

waters of Canada was conventionally regulated between the American and British Governments as follows:

The United States hereby renounce forever, any liberty, heretofore enjoyed or claimed by the inhabitants thereof, to take, dry or cure fish on, or within three marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's Dominions in America not included within the above-mentioned limits; Provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. (United States Memorial, p. 375).

Great Britain and Canada, acting in the full exercise of their sovereignty and by such proper legislative authority as was established by their municipal public law, had enacted and were entitled to enact such legislative provisions as they considered necessary or expedient to secure observance of the said Treaty; and, so far as they are not inconsistent with the said Treaty, those provisions are binding as municipal public law of the country on any person within the limits of British jurisdiction. At the time of the seizure of the *David J. Adams* such legislation was embodied in the British Act of 1819 (59 George III, C. 38), and the Canadian Acts of 1868 (31 Vict. 61), 1871 (34 Vict. C. 23).

Great Britain and Canada, acting by such proper judicial authority as was established by their municipal law, were fully entitled to interpret and apply such legislation and to pronounce and impose such penalty as was provided by the same, but such judicial action had the same limits as the aforesaid legislative action, that is to say, so far as it was not inconsistent with the said Treaty.

In this case, the question is not and cannot be to ascertain whether or not British law has been justly applied by said judicial authorities, nor to consider, revise, reverse or affirm a decision given in that respect by British Courts. On the contrary, any such decision must be taken as the authorized expression of the position assumed by Great Britain in the subject-matter, and, so far as such decision implies an interpretation of said treaty, it must be taken as the authorized expression of the British interpretation.

The fundamental principle of the juridical equality of States is opposed to placing one State under the jurisdiction of another State. It is opposed to the subjection of one State to an interpretation of a Treaty asserted by another State. There is no reason why one more than the other should impose such an unilateral interpretation of a contract which is essentially bilateral. The fact that this interpretation is given by the legislative, or judicial or any other authority of one of the Parties does not make that interpretation binding upon the other Party. Far from contesting that principle, the British Government did not fail to recognize it. (United States Memorial, p. 119.)

For that reason the mere fact that a British Court, whatever be the re-

spect and high authority it carries, interpreted the treaty in such a way as to declare the *David J. Adams* had contravened it, cannot be accepted by this Tribunal as a conclusive interpretation binding upon the United States Government. Such a decision is conclusive from the national British point of view; it is not from the national United States point of view. On the other hand, the way in which the Canadian Acts, enacted to enforce the Treaty, had been applied by the Canadian Courts, and penalties have been imposed, is a municipal question, and this Tribunal has no jurisdiction to deal with them. The only exception would be the case of a denial of justice. But a denial of justice may not be invoked, unless the claimant has exhausted the legal remedies to obtain justice. As has been shown, the claimant in this case renounced his right to appeal against the decision concerning his vessel. Then the duty of this international Tribunal is to determine, from the international point of view, how the provisions of the treaty are to be interpreted and applied to the facts, and consequently whether the loss resulting from the forfeiture of the vessel gives rise to an indemnity. (Oral Argument, p. 157.)

According to the British view, the stipulation of the Treaty of 1818 according to which the American fishermen shall be admitted to enter the Canadian bays and harbors for shelter, repairing damages, purchasing wood, and obtaining water, "and for no other purpose whatever," means that the American fishermen have no access to the said bays and harbors for purchasing bait.

On the other hand, the United States Government contends that the right of access as such is not prohibited to the American fishermen by the Treaty, except so far as it is inconsistent with the prohibition of taking, drying or curing fish within the three mile limit, accepted by the United States in that Treaty. The four cases (shelter, repairs, wood and water) of admittance, are cases where admittance is secured by the Treaty, and cannot be refused or prohibited by local legislation.

In other words, according to the American view, the United States Government had renounced by the Treaty their former liberty to fish in Canadian territorial waters. That renunciation has as a counterpart the obligation of the Canadian Government to admit American fishermen for shelter, repairs, wood and water and for no other purpose. That is to say, that Canada has no obligation to admit the said fishermen for any other purpose than these four—that Canada may very well prohibit the entrance for any other purposes; but, so long as entrance for the purpose of purchasing bait is not prohibited by Canadian legislation, it must be considered as the legal exercise of the right of access belonging to any American ship.

In this Tribunal's opinion, a stipulation which says that fishermen "shall be admitted" for certain enumerated purposes and "for no other purpose whatever," seems to be perfectly clear and to mean that for the specified purposes the fishermen shall be admitted and for any other purposes

they had no right to be admitted, and it is difficult to contend that by such plain words the right to entrance for purchasing bait is not denied.

No sufficient evidence of contrary intention of the High Contracting Parties is produced to contradict such a clear wording.

It has been said in support of the United States contention that "if the language of the Treaty of 1818 is to be interpreted literally, rather than according to its spirit and plain intent, a vessel engaged in fishing would be prohibited from entering a Canadian port 'for any purpose whatever, except to obtain wood or water, to repair damages or to seek shelter.'" And also that "the literal meaning of an isolated clause is often shown not to be the meaning really understood or intended." (United States Memorial, pp. 56, 57.)

Such an intention of the negotiators to contradict the literal meaning of the Treaty does not appear in the evidence presented in this case. It appears from the report dated October 20, 1818, from Gallatin and Rush, the two American Plenipotentiaries (British Answer, pp. 27, 28), that they had in view to procure for the American fishermen fishing on the fishing grounds outside the three mile limit off Nova Scotia coasts, the privilege (that is to say, the exceptional right) of entering the ports for shelter.

But, assuming the construction contended for by the United States Government, it must be considered that as early as 1819, that is to say, immediately after the Treaty, the British Act of 1819 (59 Geo. III, c. 36, section III) expressly enacted that the entrance into the Canadian bays and harbors should not be lawful. This act says:

Be it enacted that it shall be lawful for any fishermen of the said United States to enter into such bays or harbours of His Britannic Majesty's Dominions in America as are last mentioned for the purpose of shelter, and repairing damages therein, and of purchasing wood, and of obtaining water, and for no other purposes whatever.

If the entrance for the other purposes is not lawful, it is difficult to say that such entrance is not prohibited.

It is true that, according to the various documents produced, either by reason of arrangements between the American and British Governments or for political or economic reasons the enforcement of the prohibition resulting from that statute was practically rare, and it results from the documents that the entering of American fishermen into the Canadian ports for the purpose of purchasing bait was at certain periods of time commonly practiced.

But it has been shown that, at least in 1877, before the Halifax Commission, it was admitted by the United States that the American fishermen were enjoying access to the Canadian ports for purchasing bait "only by sufferance," and could at any time be deprived of it "by the enforcement of existing laws or the reenactment of former oppressive statutes." And the United States Government stated at that time that it was not aware "that

the former inhospitable statutes have ever been repealed. Their enforcement may be renewed at any moment." (British Answer, p. 11.)

During the period extending from 1877 to 1886, the fisheries articles of the Treaty of Washington (May 6, 1871; United States Memorial, p. 392), superseded the Treaty of 1818 as regards the prohibition of fishing and the tolerance for purchasing bait was continued.

On January 31st, 1885, the United States Government denounced the Washington convention, which was declared to be terminated on July 1st, 1885 (British Answer, p. 60), but in order not to disturb the fishing campaign of 1885 a *modus vivendi* was agreed upon by the two governments to end on January 1st, 1886, and the notes exchanged on that occasion show that the purchasing of bait was to continue during that time and that the Canadian authorities should abstain from impeding the local traffic incidental to fishing during the remainder of the season of 1885 (United States Memorial, pp. 397, 400). At the same time the Canadian Government proposed to the United States Government that a mixed commission should settle by agreement the various fishing difficulties existing between the two countries and the *modus vivendi* was proposed from the Canadian side, based on a favorable Presidential recommendation for that proposal. (United States Memorial, p. 401; British Answer, p. 62.)

The Senate of the United States did not agree to that proposition.

At the termination of the transitory régime which purported to avoid an "abrupt transition" in the existing state of things (United States Memorial, p. 399), in the early days of March, 1886, and before the beginning of the fishing campaign of 1886, the Canadian Government gave a public warning, dated March 5th, 1886 (United States Memorial, p. 367), reproducing the text of the 1818 Treaty. The same warning also called attention to the provisions of the Canadian Act, 1868, respecting fishing by foreign vessels, but not to the special provisions of the Act of 1819 concerning the entrance by the fishermen into the Canadian harbors. The British Government requested the United States Government to give also a public warning; but it answered that the proclamation of the President already given on January 31st, 1885, constituted a "full and formal public notification," and it was not necessary to repeat it." (British Answer, pp. 62, 63.)

Such was the state of things when the owner of the *David J. Adams* was deprived of his vessel.

The United States Government contends that even assuming the existence of the prohibition of entering into Canadian harbors for purchasing bait, the seizure was, on the facts in this case, a violation of international law, because "as a matter of international law, where for a long continued period a Government has, either contrary to its laws or without having any laws in force covering the case, permitted to aliens a certain course of action, it cannot under the principles of international law, suddenly change that course and make it affect those aliens already engaged in forbidden transac-

tions as the result of that course and deprive aliens of their property so acquired, without rendering themselves liable to an international reclamation." (Oral Argument, p. 751; see also p. 47.)

But it seems difficult to apply such a principle based upon the *bona fides* of foreigners to this case where (a) the master of the schooner was not an alien already engaged in the country in a transaction suddenly forbidden; (b) the said master entered the Canadian harbor in violation of his own ship-owner's instructions (United States Memorial, pp. 182, 185, 248); (c) the said master admitted that he knew the Canadian law (United States Memorial, pp. 254, 258); (d) the said master, in order to induce his vendor to sell him the bait, falsely declared that his vessel had been bought by Englishmen and was no more an American one; (e) the said master falsely declared that he entered the harbor to see his relatives (United States Memorial, pp. 253, 289); that he had no bait on board (United States Memorial, pp. 254, 263); that he strongly denied that he had bought bait (United States Memorial, pp. 254, 259); that the bait, which was afterwards revealed by the search, was ten days old (United States Memorial, pp. 254, 263, 289, 290, 302), and even after the seizure, he tried to deceive the United States Consul General by asserting under oath that he did not purchase or attempt to purchase bait while at anchor above Bear River (United States Memorial, pp. 46, 269, 273, 288, 309); (f) the said master took away the ship's papers (United States Memorial, p. 45), which afterwards he refused to give to the Canadian authorities (United States Memorial, p. 316); and where, as it is clearly shown, this master made desperate efforts to avoid the consequences of an act which he knew was illegal.

If, on the other hand, such an attitude of the master of the *David J. Adams* is compared with the public proclamations by the Canadian Government as well as by the United States Government (United States Memorial, p. 367; British Answer, pp. 62, 63), it does not appear that this was a case of a sudden and unexpected change of a government's conduct towards a foreigner suddenly surprised by that change.

Furthermore, and without interfering with what the Canadian authorities, acting under their municipal rights of jurisdiction, held to be the proper application of their legislation and the penalties thereunder, and without admitting any foundation in this case for a contended denial of justice, for the reasons above stated, this Tribunal cannot refrain from observing that if the unlawfulness of the entrance in the Canadian ports was effectively provided for in the Act of 1819, in accordance with the Treaty of 1818, on the other hand the penalty of forfeiture for buying bait was enacted for the first time by the Act of 1886 (49 Vict., c. 114; United States Memorial, p. 386), posterior to the seizure of the *David J. Adams*.

Further, if the consequences resulting to the owner of the *David J. Adams* from the confiscation so pronounced, are considered, they appear as being particularly unfortunate and unmerited.

It results from the documents (United States Memorial, p. 181) that Jesse Lewis was a poor aged man, who was possessed of no means of any moment or value other than the said schooner, that his wife was an invalid, and that after his vessel was seized, he was compelled to go to sea to earn a living for himself and his wife (United States Memorial, p. 183). And further he appears as having been perfectly innocent of his master's conduct, whom he had expressly prohibited from entering Canadian ports, as it has been shown.

It is true, the proceedings which resulted in the confiscation of the *David J. Adams* constituted an *actio in rem* against the vessel and not against the owner; but finally all the consequences of the affair were inflicted on the owner and his abandonment of his right of appeal which might have succeeded as to the penalty, seems to have been partly due to his absence of pecuniary means.

Under these circumstances, this Tribunal thinks it is its duty to draw the special attention of His Britannic Majesty's Government to the loss so incurred by Jesse Lewis and it ventures to express the desire that that Government will consider favorably the allowance as an act of grace to the said Jesse Lewis or to his representatives, on account of his unfortunate misfortune, of adequate compensation for the loss of his vessel and the damages resulting therefrom. That compensation, this Tribunal earnestly urges upon the attention of the British and Canadian Government.

FOR THESE REASONS

The Tribunal decides that, with above recommendation, the claim presented by the United States Government in this case be disallowed.

The President of the Tribunal,

HENRI FROMAGEOT.

IN THE MATTER OF THE S. S. NEWCHWANG

CLAIM No. 21

Decision rendered December 9, 1921

This is a claim presented by His Majesty's Government for the sum of £4,271/4/8 with interest from August 27, 1902 (the date on which the claim was first brought to the notice of the United States Government) for damage sustained by the China Navigation Co., Ltd., a British corporation, as the result of a collision which occurred on May 11, 1902, off the southern mouth of the Yangtse River between the British steamship *Newchwang*, owned by the said company, and the *Saturn*, a naval collier, owned and operated by the United States Government.

There is no contest about the ownership of either the *Newchwang* or the *Saturn*, the British nationality of the claimant, or the fact of the collision.

On July 11, 1902, an action for damages was brought by the United States Government against the China Navigation Co., Ltd., in His Britannic

Majesty's Supreme Court of China and Corea in Admiralty. On August 16, 1902, an application for leave to enter a counter-claim was filed by the China Navigation Co., Ltd., but on August 20, 1902, an order was made refusing this application for lack of jurisdiction. On January 16, 1903, both parties being represented, the Court decided the case upon its merits, and delivered a judgment as follows:

This Court doth decree and order that the *S/S Newchwang* being in no way to blame for the collision referred to in the Plaintiff's petition this suit be dismissed with costs to be taxed. (British Memorial, p. 51.)

The British Government contend that by reason of this judgment the liability of the United States for the damage and loss suffered by the China Navigation Co., in consequence of the collision is covered by the principle of *res judicata* and, therefore, not open to dispute.

It is unnecessary here to discuss the value of a plea of *res judicata* before an international tribunal of arbitration. It is a well established rule of law that the doctrine of *res judicata* applies only where there is identity of the parties and of the question at issue. The only matter before His Britannic Majesty's Supreme Court was the liability of the China Navigation Co., Ltd., as owners of the *Newchwang*, whereas the question submitted to this Tribunal is the liability of the United States Government as owners of the *Saturn*. Whatever, therefore, be the connection in fact between the two questions, they are not identical. Further, it is impossible to say that the question of the liability of the United States is concluded by the decision of His Britannic Majesty's Court, when that Court, on the contrary, held that it had no jurisdiction to deal with that question.

In these circumstances it is for this Tribunal to decide whether the United States Government is liable to pay compensation for the said collision. For this purpose it is authorized by Article 5 of the Pecuniary Claims Convention to consider such evidence and information as may be furnished by either Government.

Although the decision of His Majesty's Supreme Court is not in any sense *res judicata* in this case, and although the findings of the Court as to the facts upon which liability depends are not binding upon this Tribunal, yet they are evidence of the conclusions reached by a competent municipal tribunal. But, in considering these conclusions, and the evidence upon which they were based, it must be remembered firstly, that there the burden of proof was on the *Saturn*, while before this Tribunal it is on the *Newchwang*; and secondly, that evidence has been put before this Tribunal which was not before that Court. In behalf of the United States, the most important fresh evidence is the report of the proceedings of the United States Naval Board of Investigation, dated May 23, 1902, within two weeks after the collision, which laid the blame for the collision on the *Newchwang*. The only evidence presented on the part of Great Britain which was not before

the trial court, consists: (a) of certain bills introduced into the United States Senate providing for the reference of this claim to the Court of Claims, to determine, subject to certain conditions whether any damages should be paid, and (b) a copy of a letter dated January 30, 1907, addressed by the Secretary of the Navy to the Chairman of the Committee on Claims of the House of Representatives. His Majesty's Government contend that this letter contains an admission of liability which estops the United States from denying responsibility. It appears, however, from a statement made by the Counsel for Great Britain on the oral argument, that this letter was merely a personal or private recommendation to the Chairman of the Committee on Claims, and has never been officially published, and for this reason in the opinion of the Tribunal it cannot be regarded as an admission of liability on the part of the United States. As to the bills, it was also stated in the oral argument that none of them were voted upon in the Senate, nor were they even favorably reported upon by the Committee on Claims, to which they were referred.

Dealing now with the merits.

I. As to the facts:

It is admitted on both sides that the night was clear and the water smooth and that there was plenty of searoom; it is shown that the regulation lights were burning brightly and the regular watches kept; the force of the tide is not in dispute, and under all these circumstances it is difficult to understand how, with the exercise of ordinary care and skill, the collision occurred.

Notwithstanding a considerable conflict of evidence, and a wide variance between the *Preliminary Acts* of the two ships and the oral evidence of those on board them, the following facts are clearly established.

On May 11, 1902, at about eleven p.m., the British *S/S Newchwang* 894 tons gross tonnage was proceeding up the Chinese coast from Amoy to Shanghai and had passed through Steep Island Pass, steering North 2° West Magnetic. Her speed was 10-12 knots. She sighted at a distance of six miles and about two points on her *port* bow the masthead light of another steamer, which afterwards proved to be the *Saturn*. She held on her course.

At the same time, the United States collier *Saturn*, bound from Shanghai to Cavite, Philippine Islands had passed Bonham Straits and Elgar Island; her speed was 10-12 knots and she was steering South $\frac{1}{4}$ East. She reported no light at all at the time when she herself was sighted by the *Newchwang*.

However, about twenty minutes later the *Saturn* passed another steamer, the *Hoihow* which was going north in front of and in the same course as the *Newchwang*. The *Saturn* ported her helm and came to starboard in accordance with the Rules of the Road, but so tardily that the captain of the *Hoihow* testified that the two vessels passed at two ships' length apart.

After so passing the *Hoihow* the *Saturn* resumed her course and it was

only then that she sighted the masthead light of the *Newchwang*. At that time the two vessels were less than $1\frac{1}{2}$ miles apart. In the oral argument, not only was it admitted but stress was laid upon the fact that from the time the *Saturn* passed the *Hoihow* at 11:14 P.M., only six minutes elapsed before the collision; that the *Saturn* saw the masthead light of the *Newchwang* at 11:16 P.M., and her red light at 11:17.43 P.M., and that the collision occurred at 11:20 P.M., so that the *Saturn* saw the masthead light of the *Newchwang* only four minutes and her sidelight only two minutes before the collision. The combined speed of the vessels at the time was about 22 knots.

At that moment as soon as she saw the sidelight on the *Newchwang* the *Saturn* ported her helm, as she had done a few minutes before, when she met the *Hoihow*.

The fact that the *Saturn* crossed the *Newchwang* in this way has been contested. But it seems to [be] the correct inference from the statement in the Preliminary Act of the *Saturn* that when first seen, two minutes, that is after passing the *Hoihow*, the *Newchwang* bore $\frac{3}{4}$ of a point off the *Saturn*'s starboard bow—from the admission by Counsel for the United States in the course of the oral argument that it was the duty of the *Saturn* to keep out of the way of the *Newchwang*, from the evidence of her captain ("I sighted light on starboard bow $\frac{1}{2}$ to $\frac{3}{4}$ of a point"), and also from the captain's admission that after passing the *Hoihow*, he resumed his course, which was South by $\frac{1}{4}$ East and then saw the *Newchwang*'s red light. This would have been impossible unless he had crossed her bow from starboard to port. On the other hand the consistent evidence of those on the *Newchwang* is to the effect that they first saw the green light of the *Saturn* on their starboard bow, the *Newchwang*'s course then being North 2° West Magnetic, and that subsequent to that the *Newchwang* starboarded to clear a junk and did not go back on her course, so that she was getting further away from the *Saturn*.

As soon [as] the *Saturn* sighted the side lights of the *Newchwang*, i. e., two minutes before the collision, and came to starboard she blew her whistle and reversed her engines. But the collision was already inevitable.

On her side the *Newchwang* tried to minimize the collision by coming to port, but that proved to be useless and the two ships struck at about right angles.

II. As to the liability:

It is clear that a good lookout was not kept on board the *Saturn* from the fact that though more than twenty minutes before the collision she was sighted by the *Newchwang*, at about six miles distance, she herself did not report the *Newchwang* until four minutes before the collision when the two ships were only $1\frac{1}{2}$ miles apart—and from the fact that she did not report any light of the other steamer, the *Hoihow*, which was passed a few minutes before the collision.

If a good lookout had been kept, the *Saturn* would have sighted the *Hoi-*

how, and, behind her, the *Newchwang*, and after passing the *Hoihow* she would have kept clear of the second steamer. Instead of that, the *Saturn* not having reported the *Hoihow*, passed her under circumstances of some peril, and having passed her, resumed her course, so that she came upon the *Newchwang* under similar but more dangerous conditions, too late for either ship to avoid an accident.

Accordingly the *Saturn* must be held to be to blame, 1st, for having neglected to keep a good lookout; 2d, for having resumed her course after passing the *Hoihow*, when she ought to have known that another steamer was following; and 3d, for having manoeuvred too late and render the collision unavoidable.

As to the *Newchwang*, the United States Naval Inquiry blamed that ship, 1st, for not having answered the *Saturn's* starboarding whistle. But according to the Rules of the Road no answering whistle ought to have been given by the *Newchwang* unless she was going to alter her course. It is true that this is not the American rule, but on the high seas the American rule does not apply to a foreign vessel; 2d, for not having stopped and reversed her engines; but evidence has shown that she did; 3d, for having her red light burning dimly; but the evidence has shown that it was burning brightly; 4th, at all events for not entering into conversation before the collision, and for striking nearly at right angles; but the *Newchwang's* manoeuvre at that moment was a desperate endeavor to minimize, if possible, the effect of a collision which had been rendered unavoidable by the inexplicable action of the *Saturn*.

The *Newchwang* appears to have kept a proper lookout. When she sighted the *Saturn* on her port bow, she had only to keep her course in order to pass port to port according to the Rules; and her manoeuvring when the collision was inevitable was merely as has been said a desperate attempt to minimize its effect and cannot be imputed to her as a fault.

III. As to the amount of liability:

The British Government claims not only the amount of the damage suffered by the *Newchwang* and the cost of her repair, but also the various expenses entailed by the action brought by the United States before the Shanghai Court.

It may be that the item for legal expenses might have been claimed in an appeal from the Shanghai decision. But this Tribunal has not to deal with such appeal, and has no authority either to reverse or affirm that decision or to deal with damages arising out of the action brought by the United States. It is true that such expenses are damages indirectly consequent to the collision; but it is a well known principle of the law of damages that *causa proxima non remota inspicitur*.

As to the amount directly arising from the collision, the British Government claim for £1,612 as loss of profit and expenses during the time of re-

pair. But no sufficient evidence is adduced to prove the loss alleged and the compensation for the deprivation of use must be computed according to the ordinary rule of demurrage at 4d per ton gross tonnage, that will be for 894 tons, the *Newchwang's* gross tonnage, a sum of £774/16/0 for fifty-two days. According to the account of Farnham, Boyd & Co., Ltd., for executing repairs, the amount of those repairs was Taels 19,251.10, i. e., £2,401/7/6.

As to the interest, it appears in the evidence that a communication was made to the Department of State by the British Embassy at Washington in relation to this matter. (British Memorial, p. 61), but as a copy of that communication has not been produced the Tribunal is not in a position to say whether or not it was an official presentation of this claim, or to ascertain the date of the communication, and consequently the Tribunal is unable to decide on the question of interest.

FOR THESE REASONS

The Tribunal decides that the United States Government shall pay to the British Government the sum of Three thousand one hundred and seventy-six pounds, three shillings and six pence (£3,176/3/6) on behalf of the China Navigation Company, Limited, owner of the *S/S Newchwang*.

The President of the Tribunal,

HENRI FROMAGEOT.

IN THE MATTER OF THE KATE

CLAIM No. 28

Decision rendered December 9, 1921

This is a claim presented by His Britannic Majesty's Government for \$4,044.75 and interest for damages for the seizure and detention of the ship, cargo, officers and men of the British schooner *Kate* by the United States steamer *Perry* on August 26, 1896.

The *Kate*, a schooner of 58.11 tons gross, was a British ship registered at the Port of Victoria, B. C.; her owners were Henry F. Bishop and Samuel Williams, native British subjects, and Otto F. Buckholz, a naturalized Canadian, having been born in Germany. By charter party dated December 20, 1895, the *Kate* was chartered for the full season of 1896 for a sealing voyage in the waters of the North Pacific Ocean and Behring Sea by Carl G. Stromgren, a naturalized Canadian, having been born in Sweden; Emil Ramlose, also a naturalized Canadian, having been born in Denmark, and James Cessford, a native Canadian. Under the terms of the charter party, the charterers had to provision and equip the vessel, and one-fifth of the entire catch of skins for the season was to be paid to the owners. (British Memorial, pp. 4, 21, 22.)

On January 15, 1896, the *Kate* left the Port of Victoria, B. C., and sailed on her sealing voyage in the North Pacific Ocean. She was manned by Stromgren as master, Ramlose as mate, and Cessford as second mate, and four seamen and twenty-five Indians (British Memorial, pp. 23, 24), and had twelve canoes (British Memorial, p. 9).

On August 23rd, an officer from the United States cutter *Rush* boarded the *Kate* and overhauled the skins. (British Memorial, pp. 3, 24.)

On August 26th, 1896, the *Kate*, while in Latitude 57° 33' N., Longitude 172° 53' W., was boarded by an officer from the United States Revenue Cutter *Perry*, and seized, and the following entry was made in her log book:

Seized this day the British schr. *Kate* for having on board two (2) fur seal skins bearing evidence of having been shot in Behring Sea. (British Memorial, p. 25.)

At the same time the Captain of the *Perry* gave the master of the *Kate* a document (British Memorial, p. 6), reading as follows:

U. S. Revenue Cutter Service, Steamer 'Perry,'
Port, At Sea, Lat. 57.33 N., Long. 172.53 W.
August 26, 1896.

I, H. D. Smith, a captain of the Revenue Cutter Service of the United States, commanding the United States steamer 'Perry,' declare that the British schooner 'Kate' of Victoria, whereof Stromgren is master, was this 26th day of August, 1896, boarded by Lieutenant F. J. Haake, R. S. C., who reported to me that said vessel had contravened the provisions of the Behring Sea Award Act, 1894. The following evidence, found upon search, is relied upon to prove such violation of law:

The aforesaid British schooner 'Kate' was found cruising within the area of the Award on the date given, namely, August 26, 1896, in Latitude 57.33 N., Longitude 172.53 W., from Greenwich, having on board two (2) fur seal skins bearing evidence of having been shot in the Behring Sea.

Having reason to believe, from the evidence cited, that the aforesaid British schooner 'Kate' had contravened the Behring Sea Award Act, 1894, in the following particulars, to wit: In having on board two (2) fur seal skins bearing evidence of having been shot in Behring Sea in violation of said Act and Article 6 of the Regulations of the Paris Award, incorporated in said Behring Sea Award Act, 1894, I have this day seized the aforesaid British schooner 'Kate,' her tackle and cargo, by authority of said Act and Orders-in-Council issued thereunder.

H. D. SMITH,
Captain, R. S. C.,
Commanding.

The *Perry* took the *Kate* in tow and on August 29, 1896, arrived in Dutch Harbor at Unalaska, and a few hours later the master of the *Kate* was informed that she was released by order of the United States Commanding Officer of the Behring Sea Patrol, and the following entry was made in her log:

Released this day the Br. Sch. 'Kate' by order of Capt. C. L. Hooper, Commanding Behring Sea Patrol; she not having any guns on board.

The *Kate* remained at Unalaska August 30th, and while there the master of the *Kate* prepared and sent through the Commander of H. M. S. *Satelite* to Captain Hooper a protest in writing claiming compensation for all loss from the time the *Kate* was absent from the sealing grounds, until she arrived back again. (British Memorial, p. 26.)

On the following day, August 31, the weather being calm, the *Kate* was towed out from Unalaska by H. M. S. *Pheasant*. "On 3rd September, 1896, the sealing grounds having been reached" (British Memorial, p. 8, sec. 27), the *Kate* took 21 seals; on September 5th, 7 seals; on September 6th, 9 seals; on September 7th, 20 seals; on September 8th, in approximately the locality where she was seized by the *Perry* on August 26th, she took no seals, and on September 9th, she took 41 seals.

The Government of His Britannic Majesty, on behalf of the charterers and the crew of the schooner *Kate*, claim damages on account of the seizure of the said schooner, contending that it was illegal and without reasonable cause, or any justification whatsoever, and that even had the detention of the vessel been justified owing to circumstances showing guilt, she should have been delivered to the British naval officer at Unalaska, or in his absence taken to Victoria. (British Memorial, pp. 11, 12.)

The United States Government, on the other hand, denies all liability; first, because its officers were acting on behalf of the British Government and not of the United States Government; second, because there was a *bona fide* belief that an infraction of the Behring Sea Award Act, 1894, had been committed; third, because the senior naval officer in command of the American fleet, in ordering the release of the *Kate*, did so as a matter of grace and favor, and the release of the vessel is not proof that the seizure was unjustifiable; and fourth, because there is no basis in law or in fact for the measure of damages. (United States Answer, p. 2.)

I. As to the legality of the seizure and liability of the United States:

The authorities cited in the declaration of the captain of the *Perry* in making the seizure of the *Kate*, were article 6 of the Regulations of the Paris Award, and Behring Sea Award Act of 1894, and the orders-in-council issued thereunder.

Article 6 of the Regulations provides:

The use of nets, firearms and explosives shall be forbidden in the fur seal fishing. This restriction shall not apply to shotguns when such fishing takes place outside of Behring's Sea during the season when it may be lawfully carried on. (United States Answer, p. 22.)

The Behring Sea Award Act of 1894 put into operation the Regulations of the Paris Award, and also provided in section 3, paragraph 3 thereof, that—

An order in council under this act may provide that such officers of the United States of America as are specified in the order may, in respect of

offences under this act, exercise the like powers under this act as may be exercised by a commissioned officer of Her Majesty in relation to a British ship. (United States Answer, p. 28.)

The order-in-council of April 30, 1894, provided in section 1 thereof that—

The commanding officer of any vessel belonging to the naval or revenue service of the United States of America, and appointed for the time being by the President of the United States for the purpose of carrying into effect the powers conferred by this article, the name of which vessel shall have been communicated by the President of the United States to Her Majesty as being a vessel so appointed as aforesaid, may, if duly commissioned and instructed by the President in that behalf, seize and detain any British vessel which has become liable to be forfeited to Her Majesty under the provisions of the recited act, and may bring her for adjudication before any such British court of admiralty as is referred to in section 103 of the "Merchant Shipping Act, 1854," . . . or may deliver her to any such British officer as is mentioned in the said section for the purpose of being dealt with pursuant to the recited act. (United States Answer, pp. 45, 46.)

The commanding officers of the United States Naval Forces in Behring Sea received confidential instructions in a circular to Commanding Officers, No. 22, dated July 24, 1894, in part as follows:

Sealing vessels fallen in with after the 31st of July, in the Behring Sea, are to be carefully searched to see if there are any implements on board, not under seal, except spears, that could be used in fur seal fishing.

A number of skins are to be taken indiscriminately and examined to see if there are any marks of shot, as cheap firearms, to be thrown overboard with ammunition when escape is found to be impossible, may be carried. (United States Answer, Exhibit 7.)

By instructions from the United States Treasury Department, dated April 11, 1895, the Commander of the Behring Sea Fleet was directed—

It has been charged heretofore, that vessels of the patrol fleet, have not properly performed their duty in the matter of making search of sealing vessels fallen in with. . . . Should you find a skin on board a vessel that bears satisfactory evidence of having been shot within the Behring Sea, you will seize the vessel. . . . The search for skins, and the determination as to whether the animals were killed by spear or shot, is of equal importance with the discovery of firearms and the unlawful use of the same in Behring Sea, under the "Regulations governing vessels employed in fur seal fishing during the season of 1895." (United States Answer, Exhibit 8.)

Any special instructions for the sealing season 1896 are not included in the evidence furnished in this case. The only evidence produced of the instructions for the season 1896 is a letter from the Secretary of State to the British Ambassador in Washington, dated April 14, 1896, in which, calling attention to the provision of the order-in-council of April 30, 1894, above quoted, it is stated—

The President has designated the revenue steamers *Bear*, *Rush*, *Perry*, *Corwin*, *Grant* and *Wolcott* to cruise in the North Pacific Ocean and Behring

Sea, including the waters of Alaska within the dominion of the United States, for the enforcement of the acts of Congress approved April 6 and 24 and June 5, 1894, . . . during the season of 1896. (United States Answer, Exhibit 9.)

The fact that the *Kate* had among her catch two seal skins that presented the appearance of being shot, when neither guns nor ammunition, except powder for the signal gun, were found on board, did not seem to the Commander of the United States Behring Sea Fleet, when the *Kate* was brought to him at Unalaska, "proof of guilt sufficiently strong to justify sending the vessel to court," and he ordered her immediate release; but at the same time he commended the captain of the *Perry* for his strict "obedience to orders to 'seize any vessel having seal skins on board that appear to have been shot.'" (United States Answer, Exhibit 11.)

In the circumstances, while there is no question of the *bona fides* of the officer making the seizure, it is evident that his superior officer did not consider that there was reasonable ground for the seizure. It follows, therefore, that on the evidence presented here, it must be held that the seizure of the *Kate* was unjustifiable, and the United States Government is responsible for any damage resulting from this seizure as the case stands.

II. As to the measure of damages:

The estimated probable catch of the *Kate* during the period from August 26 to September 7th inclusive, is fixed by the claimants as 145 seal skins at a value of \$7.55 each, amounting to \$1,094.75. This estimate is based on the catch of the Schooner *Dora Seward*, which had sixteen canoes, while the *Kate* had twelve, being twelve-sixteenths of the 329 seals skin taken by the *Dora Seward* during that period, less the 102 seal skins taken during the same period by the *Kate*.

A comparison of the catch of the *Kate* with the catch of the *Dora Seward* shows that during the period between August 23rd and 26th inclusive, the *Kate* took 76 seals and the *Seward* 166; and after the return of the *Kate* to the locality where she was seized, she took during the period between September 8th to 15th inclusive, 49 seals and the *Seward* 102. As measured by the *Seward*, the efficiency of the *Kate* was somewhat higher after her return, following her seizure, than prior thereto, but the efficiency of the *Kate* was always less than one-half the efficiency of the *Seward*, as shown by a comparison of their catches day by day. Therefore, as the claimants have asked that compensation for loss of catch for the period during which she was illegally prevented from sealing should be based on a comparison with the actual catch of the *Dora Seward* during the same period, the claimants cannot complain if fifty per cent (50%) of the catch of the *Dora Seward* is taken as the probable catch lost by the *Kate*.

Inasmuch as the sealing operations of the *Kate* on August 26th were not disturbed, the last canoe not having come on board until 7 P.M. of that day,

the total catch being 45 seals, compensation should be allowed for the period of August 27th to September 7th inclusive, based on one-half of the *Seward's* catch of 247 seals during that period, less the 57 seals taken by the *Kate* during that period, showing a loss of 67 seal skins, which at the price of \$7.55 represents a loss of \$508.05.

The Tribunal, therefore, considers that the damages for this detention should be fixed at \$508.05 for her loss of profits, and \$500 for the trouble occasioned by her illegal detention.

Inasmuch as the profits for the estimated catch of the *Kate* during the period of detention have been allowed, there was no pecuniary damages suffered on account of the detention of the officers and the crew.

As to interest:

The British Government in their oral argument admit that the 7% interest claimed in their memorial must be reduced to 4% in conformity with the provisions of the Terms of Submission.

It appears from a note addressed by the British Ambassador at Washington to the Secretary of State, dated February 15, 1897, that this was the first presentation to the Government of the United States of a claim for compensation in this case. (United States Answer, Exhibit 16.) Therefore, in accordance with the Terms of Submission, section IV, the Tribunal is of the opinion that interest should be allowed at 4% on the \$508.05 damages for loss of profits, from February 15, 1897, to April 26, 1912, the date of the confirmation of the schedule.

FOR THESE REASONS

The Tribunal decides that the United States Government shall pay to the Government of His Britannic Majesty, on behalf of the claimants, the sum of One thousand and eight dollars and five cents (\$1,008.05), with interest at four per cent (4%) on Five hundred and eight dollars and five cents (\$508.05) thereof, from February 15, 1897, to April 26, 1912.

The President of the Tribunal,

HENRI FROMAGEOT.

BOOK REVIEWS *

French Foreign Policy from Fashoda to Serajevo. By Graham H. Stuart, Ph.D. New York: Century Co., 1921, p. 375. Bibliography and Index.

In this volume, Dr. Stuart has given an interesting study of the foreign policy of the French Government from 1898 to 1914. It is an attempt, he claims, "to portray impartially the policy of the French foreign office, from the crisis of Fashoda to the crime of Serajevo. Before 1898, French foreign policy seemed for the most part to be merged in her colonial policy; after the death of the Archduke Ferdinand, the foreign policy of France was inextricably mingled with the foreign policy of her allies. In the critical intervening period, the policy of the Quai Dorsay stands forth against the cloudy background of European diplomacy."

The book begins with an introductory chapter on the "International Situation in 1898," the Dual and Triple Alliances, and the Franco-British relations of that period. Then follow three chapters which have no apparent relation to one another: one on "Fashoda" including a discussion of the Franco-British agreement of 1898, the first Peace Conference at the Hague and the policy of France and Germany in regard to the Boer War, the second on "French Diplomacy in the Orient" concerning "the Cretan Affair," French interests in Turkey, the Boxer Rebellion and adjustments with Siam, and the third dealing with French "Diplomatic Relations with Italy and the Pope." The next seven chapters cover the history of the "Entente Cordiale" and Moroccan affairs from the signing of the agreements with Great Britain and Spain in 1904 down to the Agadir incident and the Franco-German treaty of 1911. The twelfth and last chapter is entitled "Toward the World War," and is concerned with the "ministry of M. Poincaré" and the awakening of France to the danger of an European war.

One wonders why this last chapter was written in its present form. The obvious intention of the author seems to have been to bring down his narrative from the Franco-German treaty of 1911 to the murder at Serajevo in 1914. At least, he should have done this to justify the title of his work. But he has contented himself with giving a brief account of the general development of political affairs within France and in the Balkans during that period, without attempting to connect the trend of affairs in the Balkan Peninsula with the murder of the Archduke Ferdinand or the causes of the Great War. Indeed, he has made no effort to trace the history of French diplomatic activities in relation to Balkan affairs or the problems of Asia

* The *Journal* assumes no responsibility for the views expressed in signed book reviews. — Ed.

Minor during the years 1904-1914. In view of the important bearing of the competition of France, Germany, Russia and Great Britain in the Turkish Empire (leading to the economic partition of Asiatic Turkey in June, 1914) on the political situation in Europe and on European expansion in Africa, no account of the French foreign policy during this period is complete without an analysis of their policy in regard to the progress of affairs in the Ottoman Empire.

In discussing the Fashoda episode, the author fails to make clear the intimate connection of this incident with the Franco-British competition in Africa. He ignores the colonial developments of the preceding quarter of a century, making no reference even to the fundamental facts enumerated in such secondary sources as Keltie's *Partition of Africa*, Johnson's *Colonization of Africa* or Harris's *Intervention and Colonization in Africa*. It is not often that one can construct an historical narrative by beginning with one conspicuous diplomatic controversy and ending with an international crime having no connection with the original controversy. Some French writers have attempted this method of composition with varying success. And Dr. Stuart has evidently followed their example in this instance. But his book would have been more complete and infinitely more valuable, if he had given us a study of French foreign policy from about 1890 to 1914 (particularly of those years when M. Hanotaux and M. Delcassé were directing the foreign and colonial policy of France), confining his attention to the field of North African and Near Eastern diplomacy. He has gained nothing by his excursions into the more distant regions of South Africa, and of the Far East. And the value of the seven chapters on Moroccan affairs—the best portion of the volume—would have been greatly enhanced.

A number of curious errors occur here and there through the book, which are possibly due to faulty proof reading. The author refers to Herr von Kiderlen-Waechter as "Herr von Kiderlen" on pages 302, 304, 308 and 310 and as "Herr Kiderlen" on pages 310, 312, 313, and 314. And on page 217, Elihu Root is named as Mr. and M. Root; while Mr. Balfour is called M. Balfour (as if he were a Frenchman) on page 105.

The author has a pleasing, straightforward style; and both the student and the diplomatic expert will find it interesting. But the frequent use of French words and quotations will prove tiresome to the average British or American reader. The volume, on the whole, is a creditable piece of work; and it should find a useful place on the reference shelves of university, college, and city libraries.

NORMAN DWIGHT HARRIS.

Die Satzung des Völkerbundes. Commentaries by Dr. Walter Schücking and Dr. Hans Wehberg. Berlin: Franz Vahlen, 1921, pp. xxiii, 521.

The League of Nations has ceased to be a mere project. So long as it was a project, the literature dealing with it was largely non-technical. Now that fifty-one member-states have adopted this method of regulating their international relations within the scope of the League, treatises like the present will follow the method of jurisprudence. It is perhaps easier to dispense with legal aid in the creation of a plan than in its interpretation and detailed execution. It is probably not wise to do so in the former stage; it is impossible in the latter.

The book before us is a commentary on the Covenant, viewed as a constitutive statute. Political and historical material enter into the text only so far as required for legal elucidation. The authors are well known German publicists, active for many years before the war in liberal activities devoted to better international relations, which signifies that their influence was not appreciable until after the war. Dr. Schücking then became a member of the official German delegation at Versailles. Dr. Wehberg is head of the Division of International Law in the German League of Nations Union.

The introduction and the historical portions are complete, without being ponderous. The narrative begins with ancient times but is not involved with minutiae. The projects for a league advanced prior to and during the war are explained in some detail and a fairly complete picture is given of the development of the league plan at Paris. The authors are not to be blamed for laying too much emphasis on certain plans which had practically no influence in the deliberations, as these were widely published, where others were not. The proposals of the Fabians and of General Smuts are deemed by the authors to have been more highly regarded than any of the others, while the influence of the conference of the thirteen neutral Powers which met at Paris in March and April, 1919, is considered negligible, like that of the proposals made by the German delegation at Versailles. "This most solemn compact which was intended to realize the centuries-old dreams of the civilized world, came to be, then, not the result of common detailed deliberations, but was presented to humanity as the dictate of the victor" (p. 17). Notwithstanding a few complaints of similar character, the prevailing tone of the authors is not unfavorable to the League, thus differing from the judgment of one of their former colleagues, the late Dr. Fried, to whom, together with the late Dr. Lammasch, the book is dedicated. Indeed, the authors believe the results to be most promising. While they disapprove of the hegemony of the Great Powers, they believe the League to be especially valuable because of its opportunities for quick initiative; "the League is not merely a community of law but a community of work, having positive tasks" (p. 116). They also maintain that it is a layman's error to regard as war the use of force by a community of states against an offending state. The perfect idea of law

presupposes that its majesty must be upheld by force if it cannot be otherwise achieved. This is not war. "For war always was and to a degree still is an international procedure between equals, for whom there is provided no obligatory tribunal" (p. 49).

The main part of the book is a detailed commentary on the Covenant, article by article, following the official texts in French and English and a German translation. Full reference is made to the debates in committee, in the plenary sessions of the Peace Conference, and in the sessions of the Council and Assembly. Legal methods are used to analyze the text and explain discrepancies with other instruments such as the treaties of peace. Particularly interesting, for example, from an American viewpoint, is the discussion of Article 22 on Mandates. The authors point out the conflict between this article, and Article 119 of the Treaty of Versailles, the former implying that the sovereignty of the German colonies is in the League of Nations, whereas the latter places it with the Principal Powers. They reach the conclusion that the terms of the Treaty are provisional because of the controlling Article 118, whereas the Covenant is definite; therefore the transfer of sovereignty to the Principal Powers is to be considered divested whenever the Council takes action. The situation is rendered more complicated by the fact that the United States, one of the "Principal Allied and Associated Powers," is not a member of the League. The authors seem to find in the protest of the United States of February 21, 1921, in respect of the mandate for Yap, implied recognition that sovereignty rests with these Powers, not in the League, nor with the Supreme Council. The situation is by no means free from difficulty. The authors have at least clarified the issues on this and many similar points where they fail to find a solution. There is no internal authority within the League to interpret the Covenant, so the authors discreetly await the functioning of the Permanent Court of International Justice (p. 490).

ARTHUR K. KUHN.

La Doctrine Scholastique du Droit de Guerre. Par Alfred Vanderpol. Paris: A. Pedone, 1919, pp. xxviii, 534.

Coleman Phillipson, who, since the death of Ernest Nys, may lay undisputed claim to supremacy in the early history of international law, about seven years ago made the following remarkable statement:

Modern international law undoubtedly owes an inestimable debt to the work of Grotius. This fact is universally recognized, and unceasingly reiterated. But we are, too often, apt to forget that Grotius's work itself owes a very great debt to numerous forerunners. In the middle ages, the glossators and commentators, the Fathers, and the ecclesiastical doctors often discussed incidental questions concerning the law of nations. . . . Later we find more complete treatises on special subjects. The age of monographs begins in the 14th and 15th centuries, when divines and professors of law examine

with comparative fulness not only questions of war and reprisals, but also problems emerging in time of peace.¹

The statement is remarkable in that it has not been forty years since James Lorimer called attention to "the extreme injustice of the manner in which, down to our own time, it has been customary to speak of the scholastic jurists,"² at the same time in a footnote giving expression to the belief "that no more valuable contribution could be made to the literature of jurisprudence at the present time than a collection and translation of the portions of these works which have reference to general jurisprudence and international law." This want is being supplied to a considerable extent by the "Classics of International Law," inaugurated ten years ago and now being published by the Carnegie Endowment for International Peace, under the general editorship of Dr. James Brown Scott, but such a series as this does not contemplate brief works or incidental discussions.

It is extremely gratifying, therefore, to have the results of the labors of him, whom the celebrated Belgian statesman Beernaert once called "le chevalier de la paix," now incorporated in a single volume. The material collected in this volume and published posthumously was previously presented to the public in various smaller publications of the author, such as *Le Droit de Guerre d'après les Théologiens et les Canonistes du Moyen-Age* (Paris, 1911), *La Guerre devant le Christianisme* (Brussels, no date), and articles in the *Bulletin de la Société Gratry* (which became, in 1910, the *Bulletin de la Ligue des Catholiques Français pour la Paix*). The first named book is represented by pages 6-158 and 215-249, while the second is represented by pages 161-195, 250-252, 259-266, 271-284 and 325-359.

The aim of the present collection is to show the traditional and, in a certain sense, unvarying, character of the Christian doctrine on war. For this purpose, it is divided into three parts. Part I gives an exposé of the scholastic doctrine on war under the following headings:

Is war permitted to Christians?

The legitimacy of war.

The definition of just war.

The just cause.

The authority necessary to declare war.

The right intention.

Obligations of princes and subjects.

Consequences of the doctrine and the rights of the victor.

This part is itself written in the scholastic style, with the answering of objections first, followed by a brief yet clear enunciation of the proper principles involved and the addition of supporting excerpts judiciously selected from the Fathers of the Church, the theologians and the canonists.

¹ Coleman Phillipson, *Franciscus a Victoria*, in the *Journal of the Society of Comparative Legislation*, new series, vol. xv (1915), p. 175.

² James Lorimer, *The Institutes of the Law of Nations* (London, 1883), vol. i, p. 71.

Part II outlines the history of the scholastic doctrine on war from the Old Testament through the Christians of the first three centuries, St. Augustine and St. Thomas, the applications of and departures from the doctrine from the eleventh to the sixteenth century, down to the theologians of the last three centuries.

Parts I and II, which constitute about one half of the volume and occupy pages 1-285, ought to be translated into English, published and distributed widely. These two parts, besides the elucidation of the doctrine mentioned above, contain biographical sketches of all the important contributors to that doctrine. Among the Fathers of the Church and theologians will be found St. Augustine, St. Isidore of Seville, St. Thomas Aquinas, the Franciscans Monaldus and Ange Carletti, the Dominicans St. Antoninus, Sylvester, Cajetan, Victoria, Soto, Covarruvias, and Banès, and the Jesuits Bellarmine, Suarez, Vasquez and Lugo. Among the canonists are Gratian, St. Raymond of Peñaafort, Innocent IV, Hostiensis (Henry of Segusio), Legnano, Martin of Lodi, Juan Lupo, Francisco Arias, Alfonso Guerreiro and Pierino Belli. Among the civilists and other writers are Bartolus, Bonet, Christine de Pisan, Ayala, Gentili, and a host of others.³ A service of no little importance is rendered by the indication of the location of the rare works in the Bibliothèque Nationale and the Library at Lyons.

Part III contains as *pièces justificatives* translations of relevant portions of Gratian's *Decretum* and St. Thomas's *Summa*, together with Victoria's *De Jure Belli* and *De Indis* and Suarez's *De Bello* in their entirety. An appendix outlines the doctrine of Suarez on international law. An analytical table is also appended.

The present volume, however, is not a slavish reproduction of the author's earlier works. Many parts have been entirely rewritten or extended. Such is the case with the lives of St. Thomas, Victoria, Suarez and Gratian. Minor corrections have been made in other lines also. There are, however, more typographical errors than one would expect to see. Inaccuracies are also frequent.⁴ But these may be attributed to war-time conditions in the printing industry and to the posthumous publication without the benefit

³ It might be worth while in passing to mention the fact that the works of Ayala, Gentili, Victoria and Legnano have appeared in the "Classics of International Law" mentioned above, while the works of Suarez and Belli are in preparation.

⁴ On page 433 a line has been omitted without any indication; on page 432, section 418, ten lines have been omitted without any indication. Notes 4 and 5 are jumbled on page 436, as are the notes on pages 451-452. On page 322 it is stated that Victoria received the licentiate in 1522; Nys gives the date as March 24, 1521. Although an asterisk is supposed to be used to indicate notes of the author, frequent omissions of it occur. On page 442 the excerpt cited from St. Jerome is really from St. Gregory, and on page 472 the quotation from Ovid is really from Plautus. In section 20 on page 44 quotations from Suarez do not agree with the same passages in the back part of the book from which they purport to be taken and two lines of the author's own observations have been inserted in the quotation with nothing to indicate they are not part thereof.

of the author's careful scrutiny. At any rate they do not lessen the book's value to any appreciable extent.

A pleasing addition to the work is a preface by Professor Émile Chenon, of the Faculty of Law of Paris, in which he gives a detailed account of the author's life and works. Alfred Marie Vanderpol was born in 1854 and died in 1915. Although an engineer by profession, he had received his licentiate in law, and was an energetic leader in peace movements in France and Belgium. The *Ligue Belge pour la Paix* and the *Union Internationale* (founded in 1912, with headquarters at Louvain) were fostered, if not actually founded, by him. One of his friends, at his solicitation, supplied the funds necessary for the establishment at Louvain of a chair of international law according to Christian principles. Until his death he was closely identified with the *Ligue des Catholiques Français pour la Paix*, of which he was president and in whose bulletin he began his apostolate of the pen. The author's death shortly after the outbreak of the war, followed within a few years by the death of that indefatigable worker among the scholastic jurists, Ernest Nys, leaves a distinct gap among the cultivators of this field of international law on the continent.

HERBERT F. WRIGHT.

A Diplomat in Japan. By The Right Hon. Ernest Satow, G.C.M.G., LL.D., D.C.L. London: Seeley, Service and Co., 1921. With Illustrations and Plans, pp. 427.

From his retirement in Devon, Sir Ernest Satow, after more than fifty years of active diplomatic service, gives in this volume the record of his first years of foreign experience. In 1861 he went out to the Far East as student interpreter; in 1869 he went home on his first leave a Secretary of Legation. During these years events of great importance to the constitutional development of Japan had taken place and several crises in her nascent foreign relations had occurred.

The book, which is in large part based on the detailed personal journal of the author, is therefore a first hand record of a period of great significance in Japanese history by an observer who was often a participant in the events which are described. In spite of this fact the book is curiously impersonal and one realizes with difficulty that this modest young man is calmly writing of naval engagements, of murder and of assaults in the same grave style which he employs with reference to imperial ceremonies, the cost of living or Japanese theatres. On the whole the book has too much detail; the excellent glossary does not relieve the frequent use of technical Japanese terms and titles; and every page fairly bristles with names of people and places of no particular importance. There is not a grain of humor in the entire narrative and the winning of the V. C. receives less attention than a party where much *sake* is drunk.

Furthermore the author carefully avoids the use even of published diplomatic correspondence and rarely mentions any political facts of general importance which are not well known. His criticism of the French is occasional and aside from two brief references to the effects of Perry's earlier expedition one would suppose that the United States had had no part or interest in Far Eastern affairs during the decade within which this record lies. Because of such marked limitations and because there is practically no interpretation or discussion of the events described the reader is tempted to overlook the positive and valuable character of the book.

This lies first of all in the sincerity of the author, in his friendliness to Japan, and in his objective method. His book gives a remarkable background for the period and supplies the picture of a Japan that has gone forever, yet which existed so recently. Attacks on foreigners were frequent in the sixties and the temptation to pursue reprisals and gain permanent foothold and concessions on the islands was great. The central government was weak and power lay in the hands of the greater nobles. Indeed it is remarkable that the restoration of the authority of the Mikado was so easily accomplished. This event, of course, is the central fact in the book. With the fall of the Shogun the way was gradually cleared for modern imperial government. But the Mikado's power at the outset gained its first advantage from the fact that the British Legation refused to be drawn into negotiations or intrigue with the opposing clans. This policy contributed to the recognition by the Mikado's government of the foreign treaties which had been negotiated during the previous fifteen years. Thus the political revolution of 1868 did not involve a break in Japanese foreign relations. Rather foreign policy took new life from the reestablishment of the authority of the central government. But such developments lie beyond the limits of this book.

In general the main stages in the naval and diplomatic history of the period turn successively on the bombardment of Kagoshima by a British naval force to secure reparation for the murder of a British citizen by the followers of a *daimio*; on the reopening of the Straits of Shimonoseki to foreign shipping; on the opening of Osaka to foreigners; on the fall of the Shogunate and the new diplomatic relations with the Mikado. The Emperor was finally established at Yedo, better known as Tokio; and this substitution of modern Tokio for ancient Kioto as the capital was the outward sign of the change that had taken place. The book appropriately concludes with the description of an audience with the Mikado in 1869 at Yedo.

ALFRED L. P. DENNIS.

Le Droit Penal International et sa mise en œuvre en temps de paix et en temps de guerre. Par Maurice Travers. Tome I, Principes.—Règles générales de compétence des lois répressives. Paris: Recueil Sirey, 1920, pp. 676.

This is the first volume of a monumental work upon International Criminal Law in which the distinguished author sets forth the general principles of his system and the larger rules governing the validity and vigor of positive criminal law. The plan which he adopts is to reject every fiction, everything not strictly in accord with reality, and to be ready, in case of necessity, to face new problems with new conceptions. We are prepared, therefore, for a work primarily of investigation wherein abstract theories are displaced by pragmatic and positive generalizations. The author proceeds upon the theory that law is a purely experimental science. The foundation of International Criminal Law is not to be found in international cooperation, but in the necessity which each state finds for the protection and defense in the largest sense of its own social interests. Each state acts essentially in its own interest, but as between states international cooperation is the essential means by which the security of each state is guaranteed. International cooperation is therefore the superstructure which rests upon the basis of state interests. M. Travers follows De Bar in making criminal law rest essentially upon social defense and not upon individual culpability. One dominating idea in this field of law should be that in each case every opportunity be given for the investigation of facts and for the consideration and refutation of the charge, yet nothing should be neglected to reduce to a minimum the chances by which the conflict of laws may result in allowing crime to go unpunished.

Proceeding from this basic conception of social defense, the author sets forth four fundamental axioms:

(1) Every repressive law determines all questions of qualification. It is for the law of each state alone to determine as to whether a given act runs counter to the essential conditions of its life and prosperity.

(2) The penal law by which the state proceeds for the protection of its essential social interests ought to cover every circumstance involved in the criminal transaction. Whatever the place of the crime, whatever the nationality of the accused, the protective law ought to be adequate to the evil which it aims and ought to prevent.

(3) The penal law of a state, being a law of social defense, ought not to cease to be valid simply because the penal law of another state likewise undertakes to operate; every penal law ought to play the full part provided for it.

(4) Every jurisdiction should apply exclusively its own penal law.

As to the first of these axioms, the fact that the penal law of one state does or does not consider a given act in the same way that another does, namely, as punishable, is without significance in determining if a wrong has been done to the essential interests which the other state believes should be

protected. If these essential interests have been put in jeopardy, the social power which has the protection of them should be able to intervene repressively. As to the second, the result would be to permit, if need be, the application of repressive laws to acts done outside the territory subject to the jurisdiction which has decreed the laws. The third would recognize concurrently superposed legislative and jurisdictional authority, as illustrated by the Convention of 1910 for the repression of the white slave traffic. The fourth is illustrated by the terms of the same convention wherein each contracting state engages by its own legislation to create and define the crime and to provide penalties therefor. All of these fundamental axioms are assisted by and tend towards the general solidarity of international assistance. International assistance, mutual aid, and cooperation proceed from international accord and agreement. Municipal legislation should act as an auxiliary. Social safety demands international assistance, but international assistance depends upon municipal legislation and adjudication. The principal forms of cooperation are exchange of services of information, of surveillance, of preliminary examinations, and of the arrest and remanding of fugitives and prisoners.

As to an international court of penal justice having jurisdiction over war crimes, M. Travers expresses the following opinion: "We believe that in principle the prosecution of infractions of the customary or conventional rules of warfare ought to be reserved to the jurisdictions of the injured state or states."

The second part, arranged into divisions, sections, chapters, sub-sections, sub-chapters, and paragraphs, carries forward a minutely organized and classified consideration of positive international penal law, largely from the point of view of comparative legislation, with special reference always to the law of France. The jurisdiction set up by the legislation of each state does not proceed arbitrarily but is generally dominated by one or more of the following factors: the territoriality of the crime, active nationality, passive nationality, and the intrinsic nature of the crime (universality), as suggested by Meili. To these the author adds the factor based upon the presence of the person charged within the territorial jurisdiction of the state which has set forth the penal law (*cf.*, the Cutting case). The present volume considers only the first (the application of the penal law on the basis of territoriality) and the fourth (on the basis of the nature of the offense). Consideration of the territoriality of the crime demands analysis of the idea of territory. While this discussion is in general satisfactory, the portion having to do with jurisdiction over the air is somewhat brief, and, considering the recent international aerial convention, already tending to be obsolete. Special mention should be made of the detailed exposition of the situations presented by the conception of the territoriality of the crime where there is military occupation or where the territory in question is uncivilized or unoccupied.

Space does not permit a more extended review of this initial volume. In the range of national laws referred to, in the voluminous citations of adjudicated cases, and in the wealth of literature subjected to analysis, the work is as conspicuously important as it is on account of the author's candor in discussion and in his independence of judgment. With the succeeding volumes' promise and an adequate index, the work of M. Travers will indeed prove to be one of commanding value.

JESSE S. REEVES.

Grundzüge des Positiven Völkerrechts. By Dr. Karl Strupp. Bonn: Verlag Ludwig Röhrscheid, 1921, pp. viii, 251.

An undertaking to state "the positive, actually effective, present international law" in the year 1921 would seem to require an unusual degree of confidence and courage. Dr. Strupp's book is a condensation of his lectures on international law delivered at the University of Frankfurt during the Winter Semester of 1920-1921. It is interesting to note that the book is one of a series published under the title of "Der Staatsbürger" for the purpose of educating the German people in their new responsibilities of citizenship. However commendable the purpose, it seems doubtful if international law is capable of being so simplified and popularized—as has been attempted here in the brief compass of 250 pages—as to make such a text of any real value. Certainly from a scientific point of view, the treatment must be inadequate.

The plan of the book is orderly and the development logical, as one expects from a writer of Dr. Strupp's scholarly attainments. But the great body of the text might as well have been written in 1914; and, except for a parenthetical clause or a minor reference here and there, it is but a statement of the "law as it aforesaid was." No adequate account is taken of the changed situation and the effects of the violent disturbances of the last few years in the society of nations. For example, the whole topic of neutrality is treated in a most fragmentary way by a recital of the provisions in the conventions of the Hague Peace Conferences; the discussion of naval warfare is largely a recapitulation of the unratified Declaration of London of 1909, including three pages of the specific articles enumerated in that obsolete instrument under the title of Contraband. That title certainly is not now if it ever was international law.

The book is especially valuable for its documentation and historical references. Dr. Strupp's great contribution to our profession in making source material available is reflected in this book. On the whole, one must admire Dr. Strupp's objective treatment. He declares ruthless submarine warfare *per se* unlawful and permissible only in case of "Notstand" or reprisal (page 215), which seems a cryptic and inconclusive statement—all the more so in view of the author's definition of "Notstand" as given on

page 130: "Notstand, in international law, is a condition in which a state faces an instant and immediately threatening great danger, preventable only by injury to the rights of others, which danger would, under a reasonable consideration, imperil the existence, territory or people of the state or its independence to such an extent that its legal capacity to act internationally would likely be abolished or, at least, reduced to a minimum."

On page 205, Dr. Strupp says that the recent war "left the rules of naval warfare, perhaps also of land warfare, if not indeed the whole system of international law, in a state of chaos." He evidently recognizes the problem but does not show us the path to order. As a conventional restatement of former rules, the book, on the whole, is well written history but it is not "positive, actually effective law."

GEORGE C. BUTTE.

The Policy of the United States as regards Intervention. By Charles E. Martin. New York: Longmans, Green & Co., 1921, pp. 173.

In this monograph of four chapters the author clearly traces the origin and adoption of the American cardinal policy of non-intervention, and the extension of the principle to its new phase of application to the independent states of America, and also explains the two most striking departures from the principle, in relation to American states and territory, in the cases of Cuba and Panama.

In reviewing the factors entering into the formation of the policy Dr. Martin treats rather fully the policies of the Revolution resulting in the expedient treaty of alliance of 1778, and later experiences under this alliance which brought the United States face to face with the question of interference in European affairs and through various tests pointed the way to the adoption of non-intervention as a practical policy. But quite apart from the influence of practical questions in the evolution of the policy he partly explains the existence of a theory of non-intervention to a conscious purpose resulting from geographical isolation and the conception of the right of revolution.

In the chapter on extension of the American policy, he presents, as actual cases abundantly establishing the principle of non-intervention as a definite policy, many of the chief diplomatic problems in Latin American relations: the Mississippi and Florida problems; the recognition of the Spanish American republics, the Monroe doctrine (and its antecedents), the American policy of non-alliance with Latin American states, American opposition to foreign intervention in Mexico on various occasions (to 1867), American concern and policy in connection with various international controversies of Venezuela (in 1860, 1871, 1895, and 1902-03), incidents in relations of Brazil (1825 and 1893-94), relations with Argentine (1828, 1832-41 and 1898), relations with Chile (1891 and 1893), the attempted intervention of

Secretary Blaines in the Chile-Peruvian war in 1881 and the later reversion of Frelinghuysen to the policy of reserve and caution which radically changed the result of the war. Excepting the general right to intervene for protection of the rights and safety of its citizens, he concludes that American policy has been understood "to preclude the United States from intervening in the internal politics of American states" and "to preclude European states from intervening in the western hemisphere either to gain territory or to change the political system or control the destiny of American nations."

In discussing the factors resulting in the extension of the policy, he emphasizes the fact that each extension was made to meet the demands of new sets of circumstances.

In the third chapter the author traces the chief diplomatic instances illustrating American interest and policy in Cuba from 1808 to 1898; and in the fourth he traces the American policy in Panama, especially in its relation to the treaty of 1846 with New Grenada. He explains that each of these interventions was limited primarily to protection of American interests and led to the establishment of an independent state and an arrangement for guarantees of independence.

The volume has a synoptical table of contents and footnote references to authorities used, but has no index.

Dr. Martin has reserved for future publication the recent special situations in Santo Domingo, Nicaragua and Hayti—involving an American supervision which non-American powers would be forbidden to exercise, and which in its development (the author says) is not likely to ignore the purposes and limits of the distinguishing principle of American foreign policy.

J. M. CALLAHAN.

A Manual of International Law. By Rear Admiral C. H. Stockton, U. S. Navy. Second revised edition. Annapolis: U. S. Naval Institute, 1921, 355 pp.

The value of this manual is proved by the fact that the original and one revised edition have become exhausted. The author is the foremost naval authority on international law in the United States, and as such his presentation of the subject carries a weight with those for whose use the book is particularly written that no work by an author without naval experience can be expected to exercise. As was so well said by the late General Davis in his review of the first edition, it "represents the experience gained in the practice of International Law by its author during a long and especially useful career as an officer of the United States Navy; a career which may be said to have culminated in his fortunate incumbency of the office of Superintendent (President) of the Naval War College."

The general scope and arrangement of the manual remain unchanged, as does most of the text. The occurrence of the World War between the issues of the first and the present editions could not fail to be the occasion of many notices in the revision in appropriate places. Similarly the issuance of instructions by the Navy Department for the government of the U. S. Navy in maritime war in June, 1917, after the first revision of the manual, has been the occasion of additions and revisions. One change in form more than in substance is the separation in paragraphs and captions of the subjects of the destruction of enemy and of neutral prizes. It is worthy of mention because too often it is very difficult to know from their texts to which form of destruction writers are referring.

In a supplementary chapter Admiral Stockton, in addition to the revisions of the text, discusses the changes naturally occurring in the decade since the manual was first written,—changes emphasized by the greatest war in history. The captions of the Chapter include "Cutting of Cables," "Radio-Telegraphy," "Neutrality Laws," "Internment of Vessels," "Armed Merchantmen," "So-called Blockade of Germany" and "Right of Angary," which sufficiently indicates the general ground covered.

To the appendices of the original edition have been added the President's neutrality proclamation occasioned by the war between Great Britain and Germany (which had as issued a curious typographical omission of several lines that made new law as that part of the proclamation actually read, which omission was corrected in later proclamations), and the sections of the Revised Statutes governing the capture, sending in and the destruction of prizes. Sample forms of a Certificate of Registry, a Consolidated Certificate of Enrollment and License, and a License of Vessel under Twenty Tons are included.

In the form of this up-to-date revision the manual, whose usefulness has been so well demonstrated, will be of increased value to the clientele for whom it is especially written, as it will to others who have not the time or opportunity to consult more exhaustive treaties on International Law.

H. S. KNAPP.

The Proceedings of the Hague Peace Conferences. Translation of the official texts. Prepared in the Division of International Law of the Carnegie Endowment for International Peace, under the supervision of James Brown Scott. New York: Oxford University Press.

The Conference of 1899. 1920. pp. xxii, 882.

The Conference of 1907:

Vol. I. Plenary meetings of the Conference. 1920. pp. xxv, 702.

Vol. II. Meetings of the First Commission. 1921. pp. lxxi, 81, 1086.

Vol. III. Meetings of the Second, Third and Fourth Commissions. 1921. pp. xci, 1162.

Index volume covering the preceding volumes. pp. 272.

These sumptuous volumes contain the first complete English version of the Proceedings of the Hague Peace Conferences of 1899 and 1907, the original and official French versions of which have become somewhat difficult to procure. This edition in five volumes will be adopted as a definitive English edition of the Proceedings of the Hague Conferences. The translation appears in all respects to have been carefully and sympathetically made. No extended review of the contents is necessary. The index volume, prepared in the Division of International Law, makes it possible for the first time readily to turn to any part of the Proceedings. There is an index of persons and a general index by which any idea may be followed from its original expression in the Commission, Sub-commission or Plenary Session, to its final statement in the definitive conventions. The Carnegie Endowment for International Peace has put all students of international law under lasting obligation in carrying to completion this admirably conceived enterprise and in putting forth the work in a manner which is justified by its significance and importance.

J. S. REEVES.

The British Year Book of International Law, 1921-22. London: Henry Frowde and Hodder & Stoughton, 1921, pp. viii, 272. 16s. net.

This volume is the second issue of this publication and contains articles, notes on international events, digest of cases, list of international agreements from January 1, 1920-May 31, 1921, book reviews and an extensive bibliography of publications dealing with subjects of international interest.

The first two articles discuss the jurisdiction of the Permanent Court of International Justice, and are written by Sir H. Erle Richards, Professor of International Law and Diplomacy at Oxford University, and by Dr. D. C. J. Loder, of The Netherlands, who has recently been elected President of the Permanent Court of International Justice. The article by Dr. Loder is of particular interest as he reviews the stormy career of the proposal that

the International Court should have compulsory jurisdiction, which was strongly favored by a large majority of the smaller nations, and effectively opposed by the greater nations. Sir Erle Richards's article, which precedes Dr. Loder's, is apparently written for the purpose of justifying British opposition to granting compulsory jurisdiction to the International Court.

The other articles appearing in the Year Book are: Submarine Cables and International Law, by Professor A. Pearce Higgins; The Effect of War on Treaties, by Sir Cecil J. B. Hurst; Protectorates and Mandates, by T. Baty; and Mandated Territories: Palestine and Mesopotamia (Iraq), by Norman Bentwich; Judicial Recognition of States and Governments and the Immunity of Public Ships, by Arnold D. McNair; Freedom of Navigation on the Rhine, by Professor Eugene Borel; Prize Court Procedure, by E. S. Roscoe; The Roll *De Superioritate Maris Angliae*, by T. C. Wade; Sovereignty, by W. R. Bisschop; Extraterritoriality in China and the Question of Its Abolition, by M. R. Z. Tyau; and The Work of the League of Nations, by Reginald Berkeley.

In the Introduction to the Year Book, it is stated that since the publication of the first volume, the British Year Book of International Law has been affiliated to the British Institute of International Affairs. It is also stated that the Year Book must depend for its continuance on the copies which are sold to the public, and all those to whom the idea of the Year Book appeals are begged to support it by becoming subscribers and doing what they can to increase its circulation.

HOPE K. THOMPSON.

Extraterritorial Cases. Vol. I. By Charles S. Lobingier, Judge of the United States Court for China. Manila: Government Bureau of Printing, pp. lxi, 1094. Price \$6.00. (Sold by Clerk of the U. S. Court, Shanghai.)

Apropos of the widespread interest in Far Eastern subjects and especially in Extraterritoriality, a volume which has just come from the press and which embodies the work of our extraterritorial court in China during the first fourteen years of its existence deserves more than passing mention. The book is entitled "Extraterritorial Cases" and was compiled and edited by Judge Charles S. Lobingier who has presided over the United States Court for China during the past eight years.

The book contains a full report of the decisions of that court from its beginning, also of those reviewing the same by the Court of Appeals and the leading cases decided by other courts on questions of extraterritoriality. It is thus a complete case book on the subject and should prove especially opportune now that the whole scheme of extraterritoriality is to be examined by a commission with the view to determining whether conditions in China are such as to warrant its early abolition.

The book was printed at the government Bureau of Printing, Manila, and is a model of law reporting. The text is in large clear type with all quotations in small size and all citations in footnotes. There is a copious and logically arranged index and a valuable table of references including all statutes chronologically arranged, which are cited in the opinions of the court. On the whole the work will be needed by any one desiring to investigate the subject of which it treats and reflects great credit upon the administration of Judge Lobingier who attended personally to all the details of publication including the laborious task of proof reading.

The book is dedicated to Prof. John Bassett Moore of Columbia University.

CRAWFORD MORRISON BISHOP.

PERIODICAL LITERATURE ON INTERNATIONAL LAW SUBJECTS ¹

Abbreviations: American Bar Association Journal (*Amer. Bar Ass. J.*); American Law Review (*Amer. L. R.*); American Political Science Review (*Amer. Pol. Sc. R.*); Archiv. des öffentlichen Rechts (*Arch. d. öffentl. Rechts*); British Year Book (*Br. Y. Book*); Canadian Law Times (*Can. L. T.*); Harvard Law Review (*Harvard L. R.*); Hispanic American Historical Review (*Hispanic Amer. Hist. R.*); Juridical Review (*Jur. R.*); North American Review (*N. Amer. R.*); Revue de Droit International et de Législation Comparée (*R. Dr. Inter. et Légis. Comp.*); Revue de Droit International Privé et de Droit Penal International (*R. Dr. Inter. Privé et Dr. Penal Inter.*); Revue Générale de Droit International Public (*R. Gén. de Dr. Inter. Public*); University of Pennsylvania Law Review (*Pa. U. L. R.*); Yale Law Journal (*Yale L. J.*).

Alien enemy property. Les Biens et intérêts français d'avant guerre en Allemagne. Jean Teyssaire. *R. Dr. Inter. Privé et Dr. Penal Inter.* 1921. 17: 20.

Alsace-Lorraine. De la condition actuelle des Étrangers et des Personnes morales étrangères en Alsace et en Lorraine. J. P. Niboyet. *R. Dr. Inter. Privé et Dr. Penal Inter.* 1921. 17: 337.

———. Les Conflits entre la loi française et la loi allemande applicable en Alsace-Lorraine en matière de statut personnel. Eugene Audinet. *R. Dr. Inter. Privé et Dr. Penal Inter.* 1921. 17: 393.

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HOPE K. THOMPSON.

SOME ASPECTS OF THE WORK OF THE DEPARTMENT OF STATE¹

BY THE HONORABLE CHARLES E. HUGHES

Secretary of State of the United States

It is my purpose to present to you some aspects of the work of the Department of State. In view of the nature and scope of the discussions at this meeting I do not need to emphasize the extraordinary importance of our international relations at this time. But I feel that such discussions, despite their wide range, would be inadequate unless they also served to bring about a better understanding on the part of the business men of the country of the essential instrumentality through which intercourse with foreign governments is conducted.

It is impossible to have a correct appreciation of the most important activities of the Department of State without taking account of its constitutional background. The President, with the advice and consent of the Senate, has the power to make treaties and to appoint ambassadors and other public ministers and consuls. To the President is confided the authority to receive ambassadors and other public ministers. By virtue of this constitutional relation to the conduct of foreign affairs, the correspondence and negotiations with foreign powers are exclusively in the hands of the President. At the outset, Mr. Jefferson, the first Secretary of State, advised President Washington: "The transaction of business with foreign nations is Executive altogether. It belongs then to the Head of that Department, except as to such portions of it as are especially submitted to the Senate." The power of the President to receive ambassadors and ministers vests in him exclusively the authority to determine what governments are entitled to recognition, and the accredited medium for friendly intercourse. That high prerogative was not for his aggrandizement but because the vital interests of the nation were believed to demand this concentration of power. It was not deemed advisable to entrust it to the Congress and for its exercise the President is accountable "only to his country and his own conscience." The Congress, of course, controls the purse, but in the case of the constitutional authority of the Executive, as in that of the Supreme Court exercising the judicial power, the duty of the Congress to furnish the money needed for the essential equipment to exercise the authority has always been recognized. The Department of State is the instrumentality through which

¹ Address before the Chamber of Commerce of the United States at Convention held in Washington, D. C., on Thursday evening, May 18, 1922, at 8.30 o'clock.

the President gives his instructions to public ministers and consuls and conducts his negotiations with representatives of foreign governments, and thus stands in a peculiar relation to the Executive in the performance of his constitutional function.

In considering the relation of our diplomacy to the business interests of the country, it should always be remembered that the Department which deals with our foreign relations is the Department of Peace. The resources of negotiation, of reason and persuasion are within its control. The very foundation of all business security, in an important sense, is within the keeping of the Foreign Offices of Governments, as to them—as the agencies of peoples—must be entrusted the practical processes by which nations may adjust their mutual interests, settle their disputes and prevent the frightful losses and dislocations of war. I have always advocated the judicial settlement of all international disputes which can be regarded as having a justiciable character, and have favored the development of institutions for that purpose. But with due recognition of the importance of this means of settlement, it must be borne in mind that the most serious international controversies, and this is especially true at this time, are not of a legalistic nature and must be settled, if they are settled at all, by negotiations and agreements. They lie outside the application of defined juristic principles and the more unstable we find world conditions to be, the greater the necessity of the efficient operations of diplomacy and of the adequate organization and support of the Peace Department of our Government. The alternative of friendly settlement is resort to coercion, and, if you wish peace, you must pursue the methods of friendly intercourse between Governments and recognize whatever is essentially involved in these methods. There is no other way.

A fundamental question at this time is the preservation of the essential bases of international intercourse through the demand for the recognition of valid titles acquired in accordance with existing law and for the maintenance of the sanctity of contracts and of adequate means of enforcing them. Intercourse, from the standpoint of business, consists in the making of contracts and the acquisition of property rights. Nations may adopt what policies they please for the future conduct of their local affairs, and if these policies are not enlightened, the result will inevitably be that production will languish and trade will shrivel up, and they will look in vain for security and confidence: still they will be within their rights in determining their future policy in local matters. But if they seek international intercourse, they must perform international obligations. When they have invited intercourse with other nations, have established their laws under which contracts have been made and property rights validly acquired, they put themselves outside the pale of international intercourse if they enter upon a policy of confiscation. International relations proceed upon the postulates of international morality, and the most important principle to be

maintained at this time with respect to international relations is that no State is entitled to a place within the family of nations if it destroys the foundation of honorable intercourse by resort to confiscation and repudiation, and fails to maintain an adequate system of government through which valid rights and valid engagements are recognized and enforced. This is in the obvious interest of business, and this is merely a way of saying that this course is vital to the prosperity of all peoples for the activities of business are those of production and exchange upon which the welfare of peoples inevitably depend. If profits are anticipated through a departure from this clear path of honorable dealing, they will be found to be illusory.

At this time we also have occasion to deal with the enlarging of the opportunities for industry and commerce by the recognition and extension of the policy of the "Open-Door". At the recent Conference held in Washington the participating Powers succeeded in taking what has been the subject of general diplomatic phrases in relation to China and putting it with more definite explication in the precise form of a treaty engagement. Thus they have agreed that they will not seek nor support their respective nationals in seeking (a) "any arrangement which might purport to establish in favor of their interests any general superiority of rights with respect to commercial or economic development in any designated region of China", or (b) "any such monopoly or preference as would deprive the nationals of any other Power of the right of undertaking any legitimate trade or industry in China, or of participating with the Chinese Government, or with any local authority, in any category of public enterprise, or which by reason of its scope, duration or geographical extent is calculated to frustrate the practical application of the principle of equal opportunity."

This Government has been insisting, and I am glad to say with a gratifying measure of success, upon the application of this principle to the territories which recently have become the subject of the novel arrangement of mandates, and we have received important assurances with respect to equality of commercial opportunity in these regions.

In giving appropriate diplomatic support to American enterprise, our Government does not, of course, attempt to secure contracts for its nationals or to institute particular undertakings. I assume that no one could wish the Government to be so involved. Its object is to keep open the course of fair and equal opportunity. Hence, it is a vital principle that it must act with absolute impartiality with respect to American business interests which may happen to be in competition. It does not attempt to favor one at the expense of another, but to maintain such policies with respect to international intercourse as will give all a fair chance.

And, in this connection, permit me to say a word to the effect that the relations between the Department of State and business men involve a certain measure of reciprocity. It is not only important that there should be an alert and efficient organization of this branch of the government, but it is

also important that it should always be remembered that good faith and cordial feeling are of the utmost importance in international affairs and that nothing in diplomatic intercourse can atone for the conduct of disreputable business agents and speculators who do not carry into their undertakings abroad those methods of honorable dealing which must always be assumed in giving diplomatic support. This Government is not engaged in endeavoring to promote the opportunities of chicanery, and business interests in their dealings abroad are under a patriotic obligation to maintain the prestige of their country.

Aside from these observations as to fundamental principle, I could easily enumerate a host of special instances in which the activities of the Department are now engaged of vast importance to the business community. But such a narration would not aid in the safeguarding of the particular business interests concerned and at best could serve to emphasize by particularization the general observations I am making as to the importance of the adequate organization of the Department.

The organization of the conduct of foreign affairs implies the mechanism (1) for obtaining complete and accurate information, and (2) for constant and direct contact with all those concerned; and the operation of this mechanism must be dominated (3) by an American policy conceived and defined with an accurate appreciation of all American interests involved.

This manifestly requires unification of effort. The function of directing intercourse with foreign governments in the nature of things cannot be divided. There must be unity in the formulation and direction of policy and unity in its execution. Manifestly, you cannot deal with different governments through different instrumentalities; and you cannot deal with the same government through independent agencies, or you will work to cross purposes. However important and helpful it may be, and I agree that it is most important and helpful to have specialized efforts to promote trade, to secure technical assistance, to gather and disseminate in the most expert manner all needed information, to organize the facilities of commerce and provide for the manifold exigencies of our merchants—and I am as anxious as anyone to see this provision generously made—still it remains so clearly true as in my judgment to be beyond controversy that when you come to the point of dealing with governments you must have a single governmental agency of international intercourse or you will have confusion and make definite and consistent policy and effective governmental action impossible. It is especially important to recognize this fact at this time, when our international problems tend to become mainly economic problems. There is the more imperative necessity of adequately organizing international intercourse. The effective intertwining of political and economic problems imposes a heavier strain upon the machinery and requires suitable readjustment, but the exigency requiring a unified system of contact with foreign powers remains exactly the same. In truth, many of our economic problems

have now the feature that governments, directly or indirectly, are themselves more largely involved in economic projects, and economic problems must of necessity to a larger extent than before be taken up with governments through diplomatic channels. Unity of control of contact with foreign governments is absolutely essential.

There are two main divisions of the organization of intercourse with other Powers: (1) the Field and (2) the Department. These are interdependent agencies. The Field consists of Ambassadors, Ministers, Consuls and special commissioners, with their necessary staffs, constituting the instrumentalities of information and contact. There is still a lingering notion that in view of the fact that the representatives of our Government act under instructions from the Department of State and because of the improved facilities of communication, these representatives continue what is mainly a social tradition and are of slight practical value. Some may think that communications cabled directly to foreign powers would be sufficient. It is a very crude and limited view which would deny the importance of even social contacts. But the inadequacy of mere written communications, however important these may be, and of the necessity of direct personal approach should be apparent to everyone whose horizon is broad enough to enable him to consider foreign affairs to any advantage. The facilities of communication increase the opportunities for business and the multiplicity of business interests and intimacies of business relations serve not to lessen but greatly to increase the necessity for the factor of personality in contacts with foreign governments.

The tendency is strikingly shown in the endeavor at the present time, in view of the complexities of international relations, to increase the opportunity for personal contacts through the medium of international conferences. That is the whole significance of conferences,—that diplomatic notes will not suffice. Everyone familiar with foreign affairs knows that while the statement of foreign policies in formal writings is absolutely necessary, still in order to accomplish results in negotiations, there should be so far as practicable the personal contacts of diplomatic representatives. Every important business concern that can send an agent personally to conduct delicate negotiations does so. Every responsible foreign minister longs to get away from interminable note writing through which controversies tend to approach an impasse. An hour of direct intercourse between responsible Ministers is often worth months of written communications. The international conference itself is largely successful in inverse proportion to its numbers and to the extent that it represents the common purpose of a few who are interested in a particular problem and sincerely wish to find an appropriate method of solution. In the larger gatherings real accomplishment is likely to be hindered by the breaking up into groups with rival purposes which prevent results. The point is that the present effort of diplomacy is not to rely on mechanical facilities of communication but to

get to the maximum the advantage of personality in negotiations. The method of conference is a mere extension to a group of that which in a limited way is found every day in the contacts of public ministers representing their different countries.

In every part of the earth the Diplomatic and Consular Officers of the United States are watching every turn of events in their relation to the general policies of this Government. They report every source of international irritation; they note the signals of economic and political unrest, of international rivalries, prejudices, subversive tendencies and discriminatory policies. They aid the Government not merely in settling disputes but in removing or limiting the causes of possible controversy.

It seems to me that no one surveying the matter intelligently could wish to do aught but increase the efficiency of this representation. We have recently endeavored to stop competition in naval armament by agreeing upon ratios of capital ships in the case of the principal naval powers. We have been solicitous in this country, while scrapping a large part of our capital ships, to maintain a reasonable relation of our naval power to that of other countries, but diplomatic strength is even more important than naval strength, and it is a poor patriot who would scrap both his ships and his diplomats at the same time. If you are to get along without the one you must have the other. Every American should feel ashamed that any country in the world should have a better diplomatic organization than the United States. This is not a matter simply of national pride; it is a matter of national security.

I shall therefore make no apologies for asking not only your support but your active and urgent demand in the interest of American business for the maintenance and development of the most efficient organization of our diplomatic agencies. The truth is that our Foreign Service is undermanned and underpaid. Of course, in the Department of State, as in other Departments, we are most deeply interested in economy and reduction of unnecessary expense. At this time with the vast burdens resting upon our people as a result of the war, all avoidable outlays should be rigorously cut down, and the Department of State has done its full share. Let me call attention to the fact that the expenses of the entire service of the Department, including the Diplomatic and Consular Services and that of the Department in Washington, amount to less than \$11,000,000. Indeed, under the present schedule of passport fees, which I shall be glad to see revised and reduced, for the last fiscal year the receipts of the Department exceeded the total expenditures of all services by over \$1,270,000. In other words, it was a money-making institution. I am not, therefore, asking outlays which threaten the tax-payer with any serious increase of his heavy burden. A relatively small amount would be sufficient to give the equipment that is needed to provide the essential basis of a career and thus to keep trained men in the service of the Government.

The necessity for a trained staff is obvious. The notion that a wide-awake, average American can do anything is flattering to the American pride, but costs the Government dearly. In every line of effort—professional, commercial or industrial—it is thoroughly understood that you cannot obtain the necessary technical equipment through mere general experience or by reading instructions. There are thousands of items of necessary information which are a part of the common knowledge of men whose lives are entirely devoted to a class of work which cannot be obtained by anyone who is suddenly introduced from the outside. I have no regard for artificial technicalities and I fully understand the dangers of departmental routine, but it is a very shortsighted and foolish view which would confuse routine and expert knowledge. The patent fact is that you cannot have an efficient Foreign Service without having trained men and you cannot secure trained men without an adequate system for their selection and maintenance; and you cannot keep men who have been properly selected and trained and are invaluable to their country unless you offer reasonable opportunities for promotion.

I grant the importance of appointing men from outside the service to important diplomatic posts. It is most advisable that the country should have the opportunity to draw upon its reserves of wide experience, sagacity, and ability; that it should secure the benefit of the mature judgment of those who represent the fruition of American opportunity, culture and discipline, and thus invigorate the processes of diplomacy. But it must be remembered that these men, despite their training and ability, would be helpless if they did not have the backing of trained staffs. If you are to secure the full benefit of the most distinguished service at the top you must still have your organized service in all the other grades. And, as I have said, while you cannot sacrifice the great advantage of appointments from the outside to the chief positions, it is absolutely necessary that there should be a sufficient frequency of promotions from the Service itself to the chief positions, that is, of heads of missions, so as to make possible a career warranting its pursuit by a fair proportion of the very best of our young men.

The Consular Service through appropriate legislation was long ago (in 1906) placed upon a merit basis, and also by recent enactment, in 1915, supplementing an Executive Order of 1909, the secretarial portion of the Diplomatic Service has been placed upon a non-political basis by provision for appointment after competitive examination and by promotion for reasons of merit and efficiency up to Class I. The examinations are conducted so as to afford satisfactory tests, both of attainment and of adaptability to the requirements of the service. The examinations are conducted in the Department by men of great experience who know precisely the needs which must be met and the sort of equipment desired.

But while in recent years there has been great improvement by reason of this method of selection, we have serious difficulties to meet. These are:

The Diplomatic Service is greatly underpaid. A man of moderate means, whatever his ability, cannot accept the more important posts of Ambassador or Minister. These high offices are reserved to men of wealth, when in the interest of the country they should be within the reach of men of ability, whatever their private fortune. Certainly they should be within the reach of men of talent who have ignored the opportunities to amass wealth by reason of their long employment in the service of their country.

The salaries are so low in the classified Diplomatic Service that the choice of candidates is largely restricted to young men of wealthy families who are able and willing to a considerable extent to pay their own way. It is a most serious thing to be compelled to say that a young man without means, who desires to marry and bring up a family after the American tradition, cannot be encouraged to enter upon one of the most important careers that the country has to offer. I say bluntly that no American can face the facts without a sense of humiliation, and he is compelled to qualify his boasting of our intelligence and civilization so long as this condition continues.

In the present situation there is a double harm, first in keeping out men who would invigorate the Service, and on the other hand, in creating the impression that it is a rich man's club. Let me, however, warn you against an erroneous impression. It does not follow because a man has the advantage of the background of success and wealth in his family, generally won in a hard, competitive struggle, that he is not entirely worthy of appointment and promotion. On the contrary, we have some of the finest young men of the country in our service, and we ought to be grateful that under the existing conditions they are able and content to turn aside from financial opportunities to follow an intellectual bent and seek a career of honorable service to the nation. I do not depreciate those who are in the Service, but I do decry the method which limits the selection and discriminates against the poor man of equal ability. We talk a great deal of love of our country, and I should like to see a better appreciation of what its interests demand.

We have the same difficulty in the Consular Service because of the present salary scale. It is difficult to retain its best men because of tempting offers constantly made to them by the business world.

It must be borne in mind that we have always had in this country a very large proportion of our young men of the highest ability who are strongly influenced by other ideals than those of pecuniary gain. It is because of this fact that in the past generations, while America was advancing by leaps and bounds, and vast fortunes were being accumulated, the church and the teaching profession were enriched by our best blood. But there is a limit to the sacrifice that can be asked. There is a difference between plain living and actual poverty and distress. Further, the prospect that invites the young man of intellectual ambition is one of career, of recognition, of distinction; hence, it is of vital importance in organizing our Diplomatic

and Consular Services that we should provide sufficient for a decent living, and hold out the hope that conspicuous ability and fidelity will be appropriately recognized.

There is also the need of a greater flexibility. There has long been too great a distinction between the political interests of the Diplomatic Service and the commercial interests of the Consular Service. Both are engaged in political work and both are engaged in commercial work. You cannot at this time take economics out of diplomacy. If you would protect our interests on the one side you must support them on the other, and I believe that the two branches of the Service, now called the Diplomatic and Consular, should be drawn together and treated as an interchangeable unit. This would permit men to be assigned from one Service to the other and thus give a greater range of opportunity for putting men in the places where they belong as their aptitudes and special talents are revealed.

In all these matters we must be realists and not permit our mental processes to be stopped by archaic differentiations. Nearly all nations have found it necessary to make a considerable reorganization in order better to equip their Foreign Service, and this country should not lag behind.

What I have said as to the service abroad applies also to the Department. The Department is undermanned. The work places too great pressure on many of the officials and employees who are required to sacrifice constructive hours to routine. There is need of more and better paid officials to handle important matters. The work of the Department in Washington is interlaced with that of the Field and the aim is constantly to interchange the benefits of the experiences of each. Thus men should be brought in from the Field to the Department so that the Department may be enriched by contact with those who have had the benefit of experience abroad, and at the same time men should be sent from the Department to the Field so that there may be a better understanding and more intimate knowledge of the Department's policies. Happily this reciprocal influence is being maintained and the spirit of both Field and Department leaves nothing to be desired.

Then there should be a coordination of effort among the different departments of government. Sometimes it might be supposed that the different departments of government were so many different governments, such has been at times the nature of the intercourse between them. While we are intent upon perfecting any particular agency of government, we can never afford to lose sight of the fact that it is a single government whose varied instrumentalities we are considering and which must act as a single government with a unified purpose and method.

I am glad to say that we are achieving at this time a very gratifying measure of cooperation among the Departments; in particular the relations between the Department of State and the Department of Commerce are most cordial and mutually helpful. We are working with each other and endeavoring each to aid the other in its recognized field of effort. It is my

most earnest desire that all practicable measures shall be taken to promote American commerce and disseminate through all appropriate channels the essential information which the American merchant needs.

The Department of State is carrying the flag of the twentieth century. It aims to be responsive in its own essential sphere to what it recognizes as the imperative demands of American business. It aims at the coordination of the work of all departments bearing upon the same great object of American prosperity. It intends in its contacts with foreign governments to maintain the American tradition of candor and good faith, and at this difficult time it is earnestly desirous of aiding in the reestablishment of stable conditions and thus of contributing to the welfare of other peoples upon which our own prosperity must ultimately depend.

SOME OBSERVATIONS ON THE CONDUCT OF OUR FOREIGN RELATIONS ¹

BY THE HONORABLE CHARLES E. HUGHES

Secretary of State of the United States

I desire to take this opportunity to present some observations on the conduct of our foreign relations, not to define particular policies, but to consider method and control.

Recent developments abroad have marked the passing of the old diplomacy and the introduction of more direct and flexible methods responsive to democratic sentiment. Peace-loving democracies have not been willing to rest content with traditions and practices which failed to avert the great catastrophe of the world war. Public criticism in some instances overshot the mark and becoming emotional enjoyed the luxury of a bitter and indiscriminate condemnation. The most skilled diplomats of Europe were charged with having become "enmeshed in formulae and the jargon of diplomacy"; with having "ceased to be conscious of pregnant realities". More potent than the critics were the exigencies due to the war which required the constant contact and direct interchanges of responsible leaders. The aftermath of problems has made necessary the frequent use of similar methods permitting concert, flexibility, more frequent informal intercourse, and decisions which, if not immediate, are relatively speedy. The international conference attests the new effort to achieve the necessary adaptation to new demands. An eminent chronicler of European conferences tells us that he has attended over five hundred international meetings since 1914. There has been a corresponding stirring in foreign offices, modifications of the old technique and a new sense of responsibility to peoples.

It would be a shallow critic who would associate the United States with either the aims, the methods or the mistakes of the traditional diplomacy of Europe. To her "primary interests", as Washington said, we had at best "a very remote relation". We have had no part in the intrigues to maintain balance of power in Europe and no traditions of diplomatic caste. From the outset—from the first efforts of Benjamin Franklin—American diplomacy has deemed itself accountable to public opinion and has enjoyed the reputation of being candid and direct. It has opposed circumlocution and unnecessary ceremonial. Its treaties have been open to the world. Indeed, instead

¹ Address at the Commencement of the University of Michigan, at Ann Arbor, on Monday morning, June 19, 1922.

of being burdened by the artificialities, reticences and intriguing devices of an organization essentially aristocratic, instead of holding itself aloof from the current influences of politics, the organization of our instrumentalities of foreign intercourse has rather suffered from too much regard for politicians and too little attention to the necessity for special aptitude and training. But, while we have thus been immune from most of the destructive criticism visited upon old world methods, we also feel the pressure of a heightened demand for popular control, and it is essential that we should carefully consider the relation of public opinion to the conduct of our foreign relations, its proper aims, the special dangers in this field if public opinion is unintelligent or misdirected, and the conditions of the wholesome exercise of its authority. In the sphere of international action, the people have peculiar obligations as well as power, and education for citizenship implies a just appreciation of civic responsibility when peoples are dealing with each other as peoples and not merely determining domestic policy and settling internal disputes.

President Lowell has reminded us that, in asserting the final control of public opinion in popular government, the opinion to which we refer must be "public" and must really be "opinion". It imports the conviction of the people as a whole that the prevailing view expressed in the manner appropriate to our institutions should be carried out. It embraces deep-seated convictions due to the influence of tradition, authority or suggestion. In new conditions, where familiar standards are not involved, it is developed in a rational process by consideration of what are supposed to be the facts of the particular case.

It becomes at once apparent how difficult it is to develop true public opinion in relation to matters of foreign policy. There are, of course, certain viewpoints of the American people which are readily recognized, as they represent accepted postulates formulated and approved by generations of American statesmen and which could be changed only by a revolution of opinion. But in a host of matters, indeed in most cases, there is no such criterion. There are complicated states of fact which cannot be understood without an intimate knowledge of historical background and a painstaking and discriminating analysis of material. There are situations of controlling importance which are wholly unknown to the general public, and which cannot be appreciated without the special information available only to officers of the Government. The people cannot judge wisely without being informed, and the problem is how to inform them. Lack of accurate information does not imply any check upon the dissemination of what passes for fact or the withholding of comment or criticism however mistaken in its assumptions. The multiplied facilities of communication are always in use, and the processes of conjecture and suspicion go on uninterruptedly. In dealing with the problem of developing sound opinion, the fundamental consideration must always be that misinformation is the public's worst enemy, more potent for evil than all the conspiracies that are commonly feared.

Moreover, the difficulty of maintaining a true perspective and a distinctively American opinion in the field of foreign affairs is greatly increased by the natural and persistent efforts of numerous groups to bend American policy to the interest of particular peoples to whom they are attached by ties of kinship and sentiment. The conflicts of opinion and interest in the old world are reproduced on our own soil. Then there are the various sorts of propaganda by which organized minorities and special interests seek to maintain a pervasive influence.

Whatever the advantages of our governmental arrangements—and I should be the last to under-estimate them—I think it should be candidly admitted that they have the effect of limiting the opportunities for the responsible discussion which aids in the understanding of foreign policy. The conduct of foreign relations pertains to the executive power, and the executive power of the Nation is vested in the President, subject to the exceptions and qualifications expressed in the Constitution. Practice under the Constitution has abundantly confirmed the initiative of the President in the formulation of foreign policy.

The wisdom of this disposition of power has been fully demonstrated, for in view of the nature of the task, the delicacy of the negotiations involved, the necessity for promptness, flexibility and unity of control, this authority could not well be lodged elsewhere. But the separateness of the executive power under our system, while it has advantages which have been deemed to be of controlling importance, deprives the Executive of the opportunities, open to parliamentary leaders, of participation in parliamentary debates. Official communications are made by the President in the discharge of his constitutional duty. The Department of State, which is the instrumentality of the Executive in connection with foreign affairs, makes its public announcements. The Secretary of State appears before committees from time to time and gives the information which is asked. But there is lacking the direct personal relation to the discussions of the Senate when foreign affairs are under consideration. The Secretary of State, acting for the President, may negotiate an important treaty, but he has no opportunity to explain or defend it upon the floor of the Senate when its provisions are under debate. The knowledge which is at his command is communicated in formal writing or merely to those members who sit upon the appropriate committee. The advantage of oral explication and of meeting each exigency as it arises in the course of discussion and thus of aiding in the formation of public opinion in the manner best adapted to that purpose is not open to him. There are numerous situations in which an opportunity for the Executive through his Department Chiefs to explain matters of policy would be of the greatest aid in securing an intelligent judgment. As President Taft said, "Time and time again debates have arisen in each House upon issues which the information of a particular Department Head would have enabled him, if present, to end at once by a simple explanation or statement". This is especially true:

in relation to foreign affairs where the Department concerned has sources of information which generally are not available to others.

I should not favor a change in the distribution of power or any modification of practice which would encourage the notion that the Executive is responsible to the legislative branch of the Government in matters which under the Constitution are exclusively of executive concern. I should also deplore any method so contrived as to facilitate antagonism between the executive department and legislative leaders or which would merely provide opportunities for the censorious. But speaking in my private capacity and expressing only a personal opinion, I do believe in multiplying the facilities for appropriate cooperation between responsible leaders, who understand their respective functions, in a manner suited to the full discussion of great international questions when these fall within the constitutional competency of the Senate. To enable Cabinet officers to vote in either House of Congress would require a constitutional amendment and I should not favor it, but it is quite consistent with our system that the Head of a Department should have the opportunity personally to be heard where important departmental measures and policies are under consideration. Indeed, the propriety of this method of promoting a better understanding was recognized at the outset, and instead of being foreign to our system it found for a time a place in our original procedure. You will remember that the long continued abstention from such appearances followed the refusal of Congress in 1790 to hear Hamilton when he desired to make in person his Report on the Public Credit. Mischiefs will not be cured by methods which make misapprehension easy. Every facility should be provided, consistent with our system, which will aid in avoiding misconstruction, allaying suspicion and preventing unjust aspersions. The remedy for misunderstanding is explication and debate and the opportunity for thus informing the public judgment in a responsible manner should not be curtailed by any unnecessary artificiality of method.

The paramount importance of contact with the Press is fully recognized, but in the nature of things, this contact for the most part must be informal. Occasional public announcements are expected, but the representatives of the press desire to write in their own way and to obtain material by their own inquiries. What is desired is not control of news but accurate information. To meet this demand, the President himself meets the correspondents twice a week and Department Heads still more frequently. The Secretary of State has two press conferences each working day at which either the Secretary or the Under Secretary is present. The officers are not quoted, but there is frank disclosure of facts and aims within the widest possible limits. There is thus the most direct contact with those who are the principal purveyors of information and the chief educators of the public. This is our substitute for parliamentary interpellation. It is in this manner that, in substance, account is rendered to the final authority.

But open diplomacy must still be diplomacy, and it cannot be open at the

cost of losing its essential character and of frustrating its proper purposes. By diplomacy, I mean the art of conducting negotiations with foreign Powers, and when we refer, with suitable discrimination, to open diplomacy, we have in mind the appropriate publication of international engagements, and, with respect to negotiations, the absence of intrigue, the avoidance of unnecessary secrecy, candor and directness. The diplomacy of the United States has been, and is, open diplomacy.

The management of negotiations with foreign Powers, however, has its essential conditions which relate (1) to the interest of one's own State; (2) to the requirements of honorable intercourse between States; and (3) to the maintenance of international good will. These conditions impose a measure of reticence in the course of negotiations, with which the most high-minded negotiators cannot afford to dispense. Thus Washington, maintaining the right of the President to refuse information with respect to pending negotiations when he deems its disclosure incompatible with the public interest, said:

The nature of foreign negotiations requires caution, and their success must often depend on secrecy; and often when brought to a conclusion a full disclosure of all the measures, demands, or eventual concessions which may have been proposed or contemplated would be extremely impolitic; for this might have a pernicious influence on future negotiations, or produce immediate inconvenience, perhaps danger and mischief in relation to other powers.

Even the most democratic governments must desire to succeed in their negotiations, and there is no reason why democracy should turn upon itself and deprive its agents of its essential means of defense. Premature disclosures may prevent the accomplishment of the most enlightened aims, giving opportunity for the insidious efforts of selfish interests as well as favoring opposition abroad. If both the peoples and governments concerned were in complete accord, there would be no need for negotiations, and when they are not in accord and are endeavoring to reach a basis of agreement, it is fatuous to suppose that negotiations can be conducted without prudent reservations on each side. The observations that are sometimes made on this subject seem to presuppose the existence of some dominant external authority which can impose its will, whereas the peoples concerned are themselves sovereign, and if they are not to resort to force, they must have opportunity to reach an agreement mutually satisfactory. The wholesome pressure of world opinion for peaceful solutions is quite consistent with such a conduct of negotiations as will make peaceful solutions possible.

As the parties to the negotiations deal with each other upon the basis of the equality of States, they must recognize the obligations of honorable intercourse between equals. The confidence with which suggestions are received must be respected. Each must be free to make tentative suggestions and withdraw them. There must be opportunity for the informal discussion which does not represent the final stand of governments, but reflects the

proper desire to ascertain to what extent there is accord and the state of mind of each party to the controversy. It is an essential condition of intercourse that representations made by one government to another or the publication of the details of negotiations must rest upon the express or implied consent of both parties. Any government that refuses to recognize this basis of intercourse would find its opportunities for suitable adjustment of controversies seriously impaired and its influence and prestige greatly diminished.

Moreover, the maintenance of international good-will during negotiations is of vital importance. While it is assumed that democracies are peace-loving, it cannot be forgotten that the activities of democracies frequently make it difficult to arrive at a good understanding. The press in each country, in large measure, is likely to voice extreme demands and to resist accommodations. Often the pseudo-patriotic spirit is developed, most probably in the interest of local politics, and efforts are made to prevent settlements by inflammatory appeals to passion in one or more of the countries concerned. It is most desirable that such endeavors should not be facilitated by information of mere proposals, arguments and tentative positions; by disclosures which at the best, pending the efforts at adjustment, can but afford glimpses of the situation. At least we may appreciate the fact that peoples cannot deal directly with peoples; that there must be agents of negotiation; and that when these are selected as wisely as may be practicable, there must be a reasonable freedom to enable them to secure results. They cannot adequately perform their task under a fire of criticism or successfully conduct negotiations which are practically taken out of their hands and directed by a clamorous public.

With all these considerations, it remains true that there should be no secrecy for its own sake; that general policies should be made clear; that particular aims should be appropriately disclosed; that there should be public announcement of all proceedings to the extent consistent with the essential requirements of negotiation; and that nothing should ever be done by our diplomatic agents which so far as its actual character is concerned could not be publicly proclaimed and justified as being free from artifice and deception and in full accord with American principles.

The attitude of the public toward foreign relations is almost as important as the securing of adequate information; that is, there should be a suitable appreciation of the objectives of diplomatic effort. There is, of course, the fundamental matter of national security, and the instinct of self-preservation causes a quick response to any appeal on this score. Indeed, the danger is not that the people will become indifferent to the essential conditions of their security, or will lack information as to any policy or procedure which actually threatens it, but that the endeavor will be made to frustrate peaceful settlements which are eminently judicious, and which really promote the safety of the country, upon the ground that in some indirect way they will diminish the opportunities for protection. We have had recent illustration

of this. The need for enlightenment, in this aspect of the matter, is with respect to what really makes for national security.

However, in emphasizing the importance of public appreciation of the aims of our diplomacy, I do not mean to imply that there is any great lack of understanding or of support of our historic policies or of the economic interests, the protection of which has become more and more the object of diplomatic effort. It is rather my desire to emphasize the importance of peace as the object of diplomacy, and the necessity of intelligent opinion, not merely as to the desirability of peace as an abstract conception, but with respect to the conditions that are essential to the maintenance of peace. With these conditions public opinion should be deeply concerned. Attention has been directed to formal institutions, to international agreements relating to the maintenance of peace. But the fundamental fact is that, however well-devised, these will be of little worth in the absence of that state of international feeling which will promote amicable cooperation and permit the removal of the causes of discord.

It must be remembered that only a small portion of the controversial matters of great consequence, which are now engaging the attention of foreign offices, admit the application of juridical standards. They are matters demanding not legal decisions but adjustments by mutual consent. It is not simply the dispositions of old controversies that are needed, but understandings with respect to new situations and novel enterprises. In this world of intimate relations, you are likely to have either hostility or cooperation. There is no artificial method by which adjustments can be reached in the absence of a sincere desire for accord, and the cultivation of the spirit of mutual friendliness is thus the primary consideration. Without it, even the most direct contacts and the flexible arrangements of Conferences will be of no avail.

The nation that can most easily settle its differences and promote its interests, the nation that can look most hopefully for a recognition of its claims, is the nation that by its reasonable and friendly disposition, its poise and sense of justice, inspires confidence and wins esteem. Here we touch the point where the authority of sound public opinion is most necessary. It must frown upon the constant efforts to create suspicion, distrust and hatred. There can be no assurance of peace, and few of the necessary and just settlements which make for peace, in a world of hate. It should be recognized that what is more necessary than formulas is a new sense of civic responsibility in matters of international concern. The chief enemies of peace are those who constantly indulge in the abuse of foreign peoples and their governments, who asperse their motives and visit them with ridicule and insult. We resent attacks upon American character and motives when they come from abroad and we should remember that other peoples are quite as sensitive as ourselves. Intercommunication is so easy that domestic discussions of foreign affairs are not confined within the three-mile limit but are immediately published abroad

as indicative not of the sentiment of particular individuals, who may be of little relative consequence, but as indicating the sentiments of our people. It is in this way that peoples become separated by a mutual distrust, even while their responsible agents of government are endeavoring to bring about beneficial settlements and mutual confidence. The public-spirited and well-informed American, the intelligent patriot, will approach all discussions of foreign affairs with the full understanding that every reckless attack upon foreign peoples and governments reacts upon his country's prestige, impairs its influence, and to some degree threatens its peace. The principal difficulty at this time in our conduct of foreign affairs is not with method, or organization, or aims, but with the untruthful, prejudiced and inflammatory discussions in which some of our citizens and certain portions of the press permit themselves to indulge.

If there is to be less reticence in diplomacy, there must be, if not a greater reticence, at least a keener sense of responsibility in the discussion of international questions. Open diplomacy and blatant and injudicious utterances will not go well together. The corrective can only be found in that state of the public mind which will unsparingly condemn and ostracize those who by their base imputations imperil our friendly relations with other nations.

An intelligent attitude toward foreign affairs will also take account of the essential instrumentalities of intercourse and of the importance of making these as efficient as possible. The many millions of our people cannot conduct their foreign relations, and the inescapable conditions to which I have adverted make it necessary that our people should have at their command the most expert diplomatic organization. I shall not at this time review, as I have had the privilege of doing recently, the requirements of our diplomatic and consular service. I merely wish again to emphasize the point that intelligent opinion will demand that there should be an opportunity for career in this service which will draw to it as many as may be needed of the best of the educated young manhood of the country. This is not in the interest of the development of a caste; it is in the interest of the American people and public opinion should demand it.

It is apparent that this attitude of the public mind, this instructed public opinion, cannot be had save as it is produced by the conscious endeavor and constant influence of men and women who have had the special advantages of higher education. It is the interaction of the influences of the university on the one hand and of the many schools of experience on the other, that produces that clear, practical and intelligent view of affairs which we call the dominant American opinion. With respect to matters the importance of which is not immediately or generally perceived, where special study and instruction are needed, it is especially the example and influence of those who have had the advantage of college or university training that is imperatively needed.

It is not my purpose to dwell upon ideals in American education further

than to say that they may be open to the criticism of being too individualistic. It goes without saying that a young American should be able to make a living and should have every opportunity for vocational and technical training. There is no question, of course, but that it is this training of the individual which makes for the enrichment of society. And I am one of those who believe that the cultivation of the spirit, that one may have life more abundantly, is quite as important as the equipment which will enable one to secure the primary necessities of food and shelter or the means of a comfortable existence.

But along with the appropriate consideration of individual needs, there should go a more definite appreciation of the necessity of meeting the demands of training for citizenship. This implies adequate knowledge of our institutions, of their development and actual working. It means more than this in a world of new intimacies and perplexities. It means adequate knowledge of other peoples, and for this purpose there is nothing to take the place of the humanities, of the study of literature and history. When I speak of the study of history, I do not mean a superficial review, but the earnest endeavor to understand the life of peoples, their problems and aspirations. Nor is it simply or chiefly the history of a distant past that it is now most important to know. It is recent history that is of first importance, with sufficient acquaintance with the past to understand the happenings and the developments which have taken place in our own time. In our many years of schooling how difficult it is to give to our young men and women the knowledge that is worth while, which through a just and clear discernment will properly relate them to the duties and opportunities of their generation!

There are those who view the dislocations caused by the war, the present widespread impoverishment, the assaults and too frequent triumphs of unreason, the controversies over superficialities and the ignoring of the causes of distress and instability, with a feeling of hopelessness. But this is not the end of the world; rather it is the beginning of a new era, a formative period when it is the highest privilege to live and perform one's part. We need young men and women who are profound students of these developments, who are ready not only to grapple with the problems of our domestic life but who understand the origin and course of international difficulties and controversies and thus are able to take an intelligent and helpful part in forming a sound public opinion which will control America's conduct of foreign affairs. Above all we need the spirit of reasonableness which men and women of good sense and culture may bring to public discussion,—that calm judgment which proceeds from wide knowledge and keen insight.

Power and opportunity are yours. They are not confided to impersonal institutions. What will you do with them? Our ultimate security and the assurance of our progress will not be found in constitutions or statutes or treaties or conferences, important as these may be, but in the self-respect that will not permit abasement; in the national pride and just self-interest

that will not tolerate interference with independence; in the spirit of helpfulness which seeks not alliances but honorable cooperation; in the love of justice which will not permit abuse of power and which scorns to profit by unjust accusation; in the insistence upon the processes of reason by which alone we can avoid the mistakes of prejudice; in the detestation of the demagogue and all his works, the most dangerous enemy of the republic; and in the sympathy with the weak and oppressed and in the dominant sentiment of human brotherhood through which we shall be able to reconcile our national aspirations with the full performance of our duty to humanity.

SEIZURES IN LAND AND NAVAL WARFARE DISTINGUISHED

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Recent efforts to codify the international law of war have tended to differentiate more sharply between land warfare and naval warfare. But it is still frequently difficult to say where land warfare ends and naval warfare begins, and too little assistance is to be had from the few writers who have attempted to draw the line. The need of a clearly drawn line is evident when the capture of private property is being considered, for very different considerations apply in the two kinds of warfare.¹ If a capture is governed by naval law, perplexing problems of prize court procedure may arise; but a seizure governed by land law is free from all necessity for prize court adjudication and confers a title which without more may be asserted in a neutral country. The applicability of the Hague Conventions may also depend on whether a seizure is governed by the law of land, or by that of maritime, warfare—the second Convention of 1899 and the fourth Convention of 1907 are strictly applicable only in land warfare,² and the sixth and

¹ See *Annuaire de l'Institut de Droit International*, 1913, p. 182.

² *The Thalia* (1905), Takahashi, Russo-Japanese War, pp. 605, 617. But see the fourth *vœu* expressed by the 1907 Hague Conference, in which the Conference expressed the opinion that "the Powers may apply, as far as possible, to war by sea the principles of the Convention relative to the laws and customs of war on land."

During the recent war, the question was more important with reference to the second Convention of 1899. Many of the belligerents had not ratified the fourth Convention of 1907, and by Article 2 it was applicable between the Powers which had ratified "only if all the belligerents are parties to the convention." But the second Convention of 1899 had been ratified by all the belligerents except Liberia and San Marino, omitting from the list of belligerents some of the new states which were signatories of the Treaty of Versailles, viz., Hedjaz, Poland and Czecho-Slovakia. The insignificance of Liberia and San Marino as belligerents in the war might justify ignoring them for the purpose of meeting the provision in Article 2 of the 1899 Convention that the annexed regulations "cease to be binding from the time when, in a war between contracting Powers, a non-contracting Power joins one of the belligerents." Sir Samuel Evans in *The Moewe* [1914], 1 British and Colonial Prize Cases, 60, [1915] Probate 1, and the German Prize Court in *The Fenix* [1914], *Entscheidungen des Oberprisengerichts* 1, were willing to disregard the belligerency of Serbia and Montenegro in applying the sixth Convention of 1907. See also *The Blonde* [1922] 1 A. C. 313, 325; Garner, *International Law and The World War*, I, pp. 25 ff.

But the question then arises as to the extent to which the 1899 Convention has been superseded by the 1907 Convention. On this point, Article 4 of the 1907 Convention is not as clear as it might be, for it does not sufficiently definitely provide for the continuance of the 1899 Convention between all Powers which have ratified the 1899 Convention, even though some of them engaged in a war may also have ratified the 1907 Convention. The Conference

ninth Conventions of 1907 are applicable only in maritime warfare. Some general lines must, therefore, be drawn.

The question has arisen during the past war with reference to boats seized on inland rivers in Europe, and the extent to which military or naval operations on a river are to be governed by land or maritime law has given rise to some controversy. On large highways like the Danube,³ the seizure of river boats has raised the question in an interesting way, and the decision of Mr. Walker D. Hines, as Arbitrator under Article 300 of the Treaty of St. Germain, has established an interesting precedent. The question arose, during the recent war, also, in connection with British operations in German South-West Africa, and Italian operations along the Austrian coast.

CONVENTIONAL STATEMENTS AS TO THEATRE OF OPERATIONS

"International law as applied to warfare is a body of limitations, and is not a body of grants of power."⁴ For this reason, descriptions of the theatre of naval operations are usually exclusive and not inclusive—they simply exclude naval operations in the territorial waters of neutral states. The United States Naval Instructions of 1917 provide that "enemy vessels are liable to capture outside of neutral jurisdiction."⁵ The provision in some naval codes is that capture may be effected "in any waters except the territorial waters of a neutral state."⁶ The effect of such provisions is usually interpreted to be that capture may be effected either on the high seas or in the territorial waters of the belligerents. But the recent Italian rules restrict this to the high seas and "interior waters open to maritime navigation,"⁷

may have envisaged this result, *Actes et Documents*, I, 77, and it has been contended for by M. Fauchille, in 22 *Revue Generale de Droit International Public*, 106. Professor Garner's conclusion on this point seems to give insufficient attention to Article 4 of the 1907 Convention. Garner, *International Law and the World War*, I, p. 20. The editorial comment in 9 *American Journal of International Law*, 193, is more adequate.

³ It is sometimes stated that the lower Danube had been neutralized by the Treaty of Berlin of 13 July, 1878. See Bonfils, *Manuel de Droit International Public* (7th ed.), p. 1133; Sec. 3 of the German Prize Code as in force on 1 July, 1915. But Article 52 of that treaty only forbids the erection of fortifications and the navigation of the river by vessels of war, 69 *British and Foreign State Papers*, 749, 765.

⁴ Walker D. Hines, *Determination in the Matter of Questions Arising as to Danube Shipping* (1921), p. 8.

⁵ Instructions for the Navy of the United States Governing Maritime Warfare, 1917, p. 26.

⁶ Holland, *Manual of Prize Law*, 1888, p. 1; Russian *Reglement des Prises Maritimes*, 27 March, 1895, Art. 16; Japanese Prize Regulations, 7 March, 1904, Art. 2; Roumanian Prize Code, Art. 24, 5 *Bulletin de l'Institut Intermediaire International*, p. 342. The Turkish law of 31 January, 1912, explicitly authorizes seizure of boats and cargoes by sea or land forces, 5 *Bulletin de l'Institut Intermediaire International*, p. 137. Cf. Chinese Prize Regulations of 30 October, 1917, 26 *Revue de Droit International Public*, 496; Cheng, *Judgments of the High Prize Court of China*, p. 136.

⁷ Italian Rules Governing the Exercise of the Right of Prize, 25 March, 1917, Art. 5. A French translation is published in Fauchille et Basdevant, *Jurisprudence Italienne en Matiere Des Prises Maritimes*, p. xlix.

adopting the restriction embodied by the Institute of International Law in the Oxford Manual of Naval Law of 1913.⁸

The purpose of such definitions of the theatre of naval operations is usually to emphasize the impropriety of captures effected in the territorial waters of neutrals, and beyond this emphasis little attempt is made to describe precisely the geographical limits of naval capture as distinguished from seizure in land operations. As it is used in naval codes, the term "territorial waters" seems to cover inland rivers,⁹ although in some instances it may be confined to marginal seas. The generalization is sometimes drawn from these definitions that naval capture is limited to property at sea or afloat,¹⁰ and the conclusion is drawn that any seizure of property afloat must be governed by naval law. But this conclusion is hardly warranted by the expressions found in the naval codes, and it affords little assistance in the effort to determine whether seizures of river boats engaged in inland navigation should be governed by the law of land or by the law of sea operations.

CAPTURE OF RIVER BOATS

The question as to the capture of river boats must have arisen many times during the past century, yet court adjudications on it seem to be rare.¹¹ The countries having navigable rivers and large river fleets have not often been invaded, and in the cases where river boats have been seized there has usually been no necessity for court proceedings. If the law of maritime capture applies, the necessity for prize court proceedings would exist only for the satisfaction of neutrals, for between the belligerents it would seem to be unnecessary;¹² if the law of land warfare applies to the seizure, on the other hand, there is no necessity for court proceedings even when a title is asserted in a neutral country.¹³ Perhaps boats on most rivers so seldom have occasion to navigate in neutral waters or to enter neutral ports that prize court proceedings seem superfluous, even if proper.

⁸ *Annuaire de l'Institut de Droit International*, 1913, p. 610. See also the Report of the International Law Association, 1920, p. 169.

⁹ Cf. Oppenheim, *International Law* (2 ed.), I, p. 235.

¹⁰ See Baty and Morgan, *War*, p. 338; Rivier, *Droit des Gens*, II, p. 341.

¹¹ Cf. *United States v. 269½ Bales of Cotton* (1868), 1 Woolworth, 236, 259.

¹² This position was ably stated in Secretary Lansing's note to the British Government concerning *The Farn*, a British vessel captured by a German cruiser and brought into an American port during the days of American neutrality, as follows: "In the opinion of this Government an enemy vessel which has been captured by a belligerent cruiser becomes as between the two governments the property of the captor without the intervention of a prize court. If no prize court is available this Government does not understand that it is the duty of the captor to release his prize, or to refuse to impress her into its service." 9 *American Journal of International Law*, Spec. Supp., p. 364.

¹³ *O'Neil v. Central Leather Co.* (1915) 87 N. J. Law 552; *Oetjen v. Central Leather Co.* (1918) 246 U. S. 297; *Ricaud v. Am. Metal Co.* (1918) 246 U. S. 304, 250 Fed. 853; *Terrazas v. Holmes* (Tex., 1920) 225 S. W. 848; *Terrazas v. Donohue* (Tex., 1920) 227 S. W. 206.

ENGLISH AUTHORITIES

English and American courts have often been called upon, however, to consider the limits of the jurisdiction of prize and admiralty courts. While such cases are not decisive of the question at issue, since admiralty and prize courts may also have jurisdiction over booty taken on land,¹⁴ they may afford some guide to be followed in distinguishing between land and naval capture.

Questions arising out of the division of prize money among captors are municipal matters, not depending upon international law. The municipal law concerning land warfare may provide for a distribution of booty similar to that of prize money. The jurisdiction of English prize courts clearly extends to captures made by naval expeditions on enemy territory.¹⁵ An early Order in Council¹⁶ provided for the disposition of enemy ships taken in ports, creeks, or roads within English territory. The English Prize Act of 1864¹⁷ expressly provides for land expeditions of naval or naval and military forces;¹⁸ but English courts have seldom been called upon to apply it to such expeditions.

In the recent war the general question was raised in the case of *The Roumanian*,¹⁹ in which oil from British vessels was seized after having been unloaded on a wharf in England. In the course of his judgment in the Privy Council, Lord Parker of Waddington dealt with the limits of maritime prize and stated that "the test ashore or afloat is not an infallible test as to whether goods can or cannot be seized as maritime prize"; and although he thought that the local situation of the goods at the time might be of importance, he concluded that "it is the seizure as prize and not the local situation of the goods seized which confers jurisdiction" on a prize court.²⁰

¹⁴ *Banda and Kirwee Booty* (1866) L. R. 1 Adm. and Ecc. 109. The jurisdiction of prize courts in Germany seems more narrowly confined. Huberich & King, *The Development of German Prize Law*, 18 *Columbia Law Review* 503, 511.

¹⁵ *Lindo v. Rodney* (1782) 2 Douglas 613. Cf. *The Thorshaven* (1809) Edwards Adm. Rep. 102. In *The Rebeckah* (1799) 1 Christopher Robinson 227, the capture was made by naval forces from a land garrison.

¹⁶ In 1665-6, reproduced in 1 Christopher Robinson 231.

¹⁷ 27 & 28 Vict. c. 25, § 34. Cited by counsel in *The Anichab* [1919] Probate 329, 331.

¹⁸ *The Feldmarschall* [1920] Probate 289, will doubtless be a leading case on the law of joint captures by land and sea forces. See also *The Dordrecht* (1799) 2 Christopher Robinson 55; *The Stella del Norte* (1805) 5 Christopher Robinson 349.

¹⁹ [1915] Probate 26, [1916] 1 A. C. 124. Also reported in (1914) 1 *British & Colonial Prize Cases*, 75, 536. Cf. *The Achaia* (No. 2) [1915], 1 *British and Colonial Prize Cases*, 635; *The Bawean* [1918] Probate 58; *The Batavier II* [1918] Probate 66.

²⁰ In *The Geertruida* (1917) *Entscheidungen des Oberprisengerichts in Berlin*, p. 302, a claim presented by the owner of a Dutch vessel sunk by a submarine was dismissed by the German prize court because its jurisdiction was held to be limited to cases where there had been a seizure as prize. But on the necessity of possession as a condition of prize court jurisdiction, see *The Elbing* (1921) 2 *British Year Book of International Law*, p. 183, and the comment by A. Pearce Higgins in *ibid.*, p. 182.

In the case of *In re Craft Captured on Victoria Nyanza*,²¹ Lord Sterndale upheld as "legal according to the law of prize" the captures of German vessels made by British naval forces on an inland lake, Victoria Nyanza, to which no access from the sea is available for any vessels, but which in size is second only to Lake Superior among the fresh-water lakes of the world. The Victoria Nyanza was partly in British and partly in German East Africa, and the report fails to state where on the lake the seizures were effected. The court found that "there is no general principle excluding all captures on inland waters from the operation of the law of prize."

In *The Anichab*,²² a number of lighters and other harbor craft which had been seized by the South African forces on taking German ports were condemned as prize. It was held to be immaterial that the seizure had been effected by land forces; but it is to be noted that naval forces had cooperated in the hostilities. Lord Sterndale thought it immaterial also that craft "used for navigation upon the seas, not the high seas necessarily, but upon the seas, either coastwise or on the high seas, were at the moment in the water or on the beach." He decided that craft did not cease to be subject to seizure by being beached. Some of the craft had been put on cars and transported inland, some as far as three hundred miles, by the retreating German forces, where they were seized by land forces six months later. These were treated as property on land, taken by land forces in land operations, not in "hot pursuit," and hence not "the subject of maritime prize." All of the craft in this case had been used in a sea-port. The case involves no question of capture on inland rivers, though the actual taking seems to have been effected in the vicinity of a river which was not "passable"; but it does evidence a limit on the application of maritime law to a capture effected on land by land forces.

COURT DECISIONS IN THE UNITED STATES

American courts have more frequently had occasion to deal with captures made on inland waters. The first case seems to have been *W. B. v. Latimer*,²³ where a vessel apparently ocean-going was seized as prize in a navigable stream in Delaware and condemned by a court of admiralty. The Delaware Court of Errors and Appeals expressed the opinion that the question "prize, or no prize, belongs to the jurisdiction of the admiralty whether the capture be on the high seas, in ports, rivers or within the body of a country." The next case was *Brown v. United States*,²⁴ in which an

²¹ (1918) 3 B. & C. Prize Cases 295, [1919] Probate 83. The Lord President referred to the *Kangani* and the *Hedwig von Weissman* (1917) Lloyd's List Weekly Summary, 23 March, 1917, p. 2.

²² [1919] Probate 329, [1922] 1 A. C. 235.

²³ (1788) 4 Dallas 1.

²⁴ (1814) 8 Cranch 110. Cf. *Johnson v. 21 Bales* (1814) Van Ness Prize Cases, p. 21.

Many seizures must have occurred on the Great Lakes during the War of 1812. In *The*

enemy cargo which had been unloaded from an ocean-going vessel was seized while afloat in a salt water creek, tidal but not navigable, by forces of the United States during the war with Great Britain. A majority of the Supreme Court thought it a question as to property seized on land at the outbreak of hostilities and therefore refused condemnation. But the case gave Justice Story an opportunity to conclude in his dissenting opinion that "the admiralty not only takes cognizance of captures made at sea, in creeks, havens and rivers but also of all captures made on land where the same have been made by a naval force, or by cooperation with a naval force." And this conclusion was maintained in his *Notes on Prize Courts*, where he stated that the prize jurisdiction of the admiralty extends to captures made in rivers and harbors.²⁵

In the cases which arose out of the wars with England, the seizures were made on rivers within United States territory.²⁶ But several cases arose during the American Civil War in which the seizures were effected on rivers or within territory held by the Confederates. The Mississippi and its tributaries were the theatre of extensive operations during the Civil War.²⁷ In *1253 Casks of Rice* ²⁸ a United States District Court condemned as good naval prize of war a cargo taken on lighters on a river in South Carolina by United States naval forces; and in *103 Casks of Rice* ²⁹ the same court held that rice seized in a river warehouse on enemy territory by naval forces was confiscable as maritime prize, reliance being placed on the fact that the cap-
Propeller Genesee Chief v. Fitzhugh (1851) 12 Howard 443, 453, Chief Justice Taney, speaking of the Great Lakes, said: "Hostile fleets have encountered on them, and prizes been made."

²⁵ Story, *Prize Courts* (Pratt's ed.) p. xxx. These notes, which were originally printed as appendices to the first and second volume of Wheaton's reports, were published in London in 1854, under the editorship of F. T. Pratt. Cf. 2 Parsons, Shipping, p. 173.

²⁶ In *Slocum v. Wheeler* (1816) 1 Conn. 429, the capture exceeded the privateer's authority. The opinions contain elaborate discussions of the prize jurisdiction of American courts.

²⁷ The naval war on the Mississippi led Mr. Justice Miller to the conclusion in *United States v. 269½ Bales of Cotton* (1868) 1 Woolworth 236, 249, that:

"The introduction of steam, as a motive power, into vessels of war, enabling them to penetrate on inland waters, far into the interior of the country, has revolutionized naval warfare in this respect, as in many others. The presence in the waters of this great stream of a hostile fleet of a foreign nation, is among the contingencies for which we must be prepared. Again, captures may be made on this river, and others similarly situated, of property belonging to neutrals, who have a right, before it is condemned to the captors, to the judgment of a competent court upon their claims. We have then a court which, by the constitution and laws, is authorized to determine this question of prize or no prize; and we see that the exigency may arise, in which the question between the captor and the claimant should, by the adjudication of this court, be answered. We certainly cannot decline the jurisdiction, and, in the face of the fact, hold, that on the Mississippi river no such case can arise."

²⁸ (1862) Blatchford Prize Cases 211.

²⁹ (1862) Blatchford Prize Cases 211. To the same effect is *Six Hundred and Eighty Pieces Merchandise* (1863) 2 Sprague 233, in which an able argument was made by R. H. Dana, Jr.

ture had been made by a naval and not by "an ordinary land force subject to military persons."

In *Mrs. Alexander's Cotton*,³⁰ a joint expedition of federal forces consisting of gunboats and a body of troops had proceeded up the Red River to take a Confederate fort. A party from one of the gunboats landed on a plantation and took possession of cotton on land owned by Mrs. Alexander, carrying it to a place in Illinois where it was libelled as prize of war. The Red River was not navigable to sea-going vessels, but seems to have been used by smaller steamboats; nor does it empty directly into the sea, but flows into the Mississippi River three hundred and thirty-four miles above the mouth of the latter. Although the Supreme Court found the capture to have been justified by the Captured and Abandoned Property Act of March 3, 1862,³¹ it held that under the statute of July 17, 1862,³² excluding property on land from the category of prize for the benefit of captors, the cotton in question, though subject to seizure, was not maritime prize.³³

The fullest discussion in the American courts is that by Judge Miller in *United States v. 269½ Bales of Cotton*.³⁴ Cavalry forces of the United States had embarked at Helena, Arkansas, on boats and had gone into Mississippi and seized cotton on land as prize of war, and carried it back to Arkansas. A proceeding in prize was begun on behalf of the federal government. The court did not doubt that prize jurisdiction extends over the Mississippi River, but relied on the fact that this capture had been made on land by exclusively land forces, and it was not shown that the transporting vessels had been under the navy's control. As these vessels "were in no sense

³⁰ (1864) 2 Wallace 404. It was in reliance on *Mrs. Alexander's Cotton* that the Court of Claims decided that cotton seized at Apalachicola, Florida, in a warehouse on the river bank, by naval forces, had been improperly condemned as prize. *Cook v. U. S.* (1873) 9 Ct. of Claims 288.

³¹ 12 Stat. at Large 820. The validity of this Act was later attacked on the ground that it was approved by the President after the adjournment of Congress. *Hodges v. U. S.* (1883) 18 Ct. of Claims 700; *U. S. v. Weil* (1894) 29 Ct. of Claims 523.

³² 12 Stat. at Large 606. The seizure in *Mrs. Alexander's Cotton* antedated the Act of July 2, 1864, 13 Stat. at Large 377, which enacted that "no property seized or taken upon any of the inland waters of the United States by the naval forces thereof, shall be regarded as maritime prize." This statute was applied in *The Cotton Plant* (1870), 10 Wallace 577, to a capture made by a naval force on the Roanoke River in North Carolina, at a point 130 miles from the mouth of the river. Mr. Justice Strong said that "Congress probably anticipated, especially in view of the state of war when the Act was passed, that most of the captures on the rivers would be made by the army, and thought it unwise to continue two modes for the disposition of the property taken."

³³ Cf. *United States v. Winchester* (1878), 99 U. S. 372, where it was held that the admiralty jurisdiction of the United States District Courts did not extend to a seizure on land by a naval force. Under the Act of 6 August, 1861, though the jurisdiction of United States District and Circuit Courts was extended to captures on land, such proceedings did not necessarily constitute causes in admiralty so as to authorize resort to admiralty procedure in all cases. *Union Ins. Co. v. United States* (1867) 6 Wallace 759.

³⁴ (1868) 1 Woolworth 236.

war vessels," it was thought that the admiralty courts of the United States had no prize jurisdiction, "unless the circumstances of the capture show some element of a force operating from, or on, the water," and the libel was therefore dismissed.

In line with this holding, condemnation by an admiralty court of a Confederate boat, seized on the Tennessee River by river gunboats under the control of the War Department but commanded by a naval officer and "a part of the naval forces on the western waters," was upheld in *Oakes v. United States*,³⁵ on the ground that it was a naval capture and not a land capture.

In *White v. Red Chief*,³⁶ a steamer was taken from the Confederates by military forces of the United States at Port Hudson on the Mississippi River, and when libelled by a former owner, it was held that no condemnation was necessary to pass the title to the United States government, but that it had passed by the seizure. The former owner seems to have lost the enemy character which he had at the time of the seizure and, unless an enemy owner after losing his enemy character cannot dispute the title to maritime prize where there has been no condemnation, the case must have involved an application of the law of land warfare.

In *The Siren*,³⁷ the United States Supreme Court dealt with a statute authorizing the distribution of prize money, and it was held that no division of prize money was provided for where a vessel (apparently ocean-going) had been taken by joint action of land and sea forces in the Ashley River in South Carolina, although the vessel had properly been condemned as prize.

A somewhat similar case arose out of the Spanish-American war, *United States v. Dewey*,³⁸ but in this case the only question was one of distribution of prize money among captors under the statutory provision. The seizure of naval stores and other property had been made on land at a naval station at Manila by United States naval forces, and in holding that the prize money should be distributed Chief Justice Fuller stated that "it would be spinning altogether too nicely to hold that because enemy property on land cannot be taken in prize by land operations, public property destined for hostile uses, and stored on seashore in an establishment for facilitating naval warfare, might not be made prize, under the statute, when captured by naval forces operating directly from the sea."

³⁵ (1898) 174 U. S. 778. A report of the case in the Court of Claims is to be found in 30 Ct. of Claims 378.

³⁶ (1870) 1 Woods 40.

³⁷ (1871) 13 Wallace 389.

³⁸ (1902) 188 U. S. 254 (The Manila Prize Cases).

The U. S. Judicial Code of 1911 (36 Stat. 1087) amended in 1917 (40 Stat. 395) confers upon the District Courts original jurisdiction "of all civil causes of admiralty and maritime jurisdiction . . . ; of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize."

But "maritime jurisdiction" may not be extended to all inland waters in the United States. *Stapp v. Steamboat Clyde* (1890), 43 Minn. 192.

RECENT ITALIAN CASES

Few cases seem to have arisen in recent years where seizures were made on European rivers, but the recent Italian cases have presented some very interesting problems. In the case of the *Cervignano* and *Friuli*,³⁹ two boats anchored in an Austrian river port were taken by the Italians by order of the Italian occupying forces. It is not clear whether the force was a military or a naval one. The capture was opposed in a prize court on the ground that the law of maritime prize did not extend to unarmed boats at anchor in a river. In view of the lack of authority, the Italian court felt itself justified in adopting a policy of reprisal and in condemning the boats. The reprisal was based on two cases in the German prize courts. The first was a case where Belgian boats had been seized at anchor in Duisberg on the Rhine, and the second was *The Primula*,⁴⁰ where a Russian vessel (apparently ocean-going) was seized in the Tave and condemned in a German prize court. The Italian court also relied on the fact that the waters in which the Austrian boats were taken were waters in which "fluvial navigation was effected in continuance of maritime navigation" and that the boats were actually seized in maritime navigation.

In the case of the *Leonilda* and *Attilia*,⁴¹ small craft taken on the Isonzoto River by the commander of Italian troops "*pour le compte de la marine royale*" were condemned as prize. The Italian court emphasized the fact that it was not proved that the craft could not be utilized for *petit cabotage* or even for maritime voyages. It stated that the power of capture was limited only with reference to neutral territorial waters or waters neutralized by convention.

In another Italian case,⁴² decided in May, 1917, various small craft had been seized on the Isonzoto River where they had been abandoned by the Austrians. The seizure was effected by the commander of the Italian troops "*pour le compte de la marine royale*." Some of the boats were property of the enemy state. In condemning these the court relied on Article 53 of the regulations annexed to the fourth Hague Convention of 1907, being of the opinion that the Article was applicable by way of analogy in maritime war as well as in land war.⁴³ As to the other privately-owned craft, the court thought that it would be an absurd result to allow vessels subject to capture at sea to escape such liability by reason of their getting into a

³⁹ (1917) Fauchille et Basdevant, *Jurisprudence Italienne en Matière de Prise Maritimes*, p. 178. This Italian decision was referred to by Lord Sterndale in *In Re Craft Captured on Victoria Nyanza* (1918) 3 B. & C. Prize Cases, 295, 298.

⁴⁰ *Entscheidungen des Oberprisengerichts in Berlin*, p. 17.

⁴¹ Fauchille et Basdevant, *Jurisprudence Italienne en Matière de Prises Maritimes*, 194.

⁴² (1917) Fauchille et Basdevant, *Jurisprudence Italienne en Matière de Prises Maritimes*, p. 199. Cf., also, *The Monfalcone* (1919) *ibid.*, p. 497.

⁴³ The Italian Court seems to have been influenced by the fourth *vœu* expressed by the 1907 Hague Conference, to which reference has been made, *ante*, note 2.

river. It also emphasized the fact that in this case the smaller craft were utilized for purposes other than navigation in this particular river. Moreover, the Isonzoto, which seems to have been non-navigable at the point where the seizure was made, was treated as a sort of accessory to the sea.

RECENT GERMAN AND BELGIAN DECISIONS

In the German case referred to by the Italian court, *The Primula*,⁴⁴ little reference was made to the limits of maritime law. *The Fenix*⁴⁵ seems to have been seized in the Elbe by a German torpedo-boat and it was treated as a capture at sea, for the purpose of bringing the case within Article 3 of the sixth Hague Convention;⁴⁶ but the only question considered by the court was the application of the sixth Hague Convention, as the vessel had left her last port of departure before the outbreak of hostilities. In one instance, the German prize court has upheld a capture of a sea-going vessel in the river port of Antwerp.⁴⁷ Several German writers have dealt with the question.⁴⁸ In the earlier editions of his treatise, Liszt went so far as to say that a battle between two vessels on the Elbe would be governed by land law,⁴⁹ but this suggestion has not been repeated in the latest edition.

Several seizures of German-controlled boats in Belgian ports were made by Belgian troops in 1918. *The Agiena*⁵⁰ was a Dutch sailing vessel, seized as prize by the Germans on the high seas, declared good prize by a German prize court, and captured by Belgian troops in the inland port of Bruges. *The Brussels*⁵¹ was an English steamer, seized as prize by German naval forces on the high seas, declared good prize by a German prize court, and captured by Belgian troops in the port of Zeebrugge where it had been sunk. *The Gelderland*⁵² was a Dutch steamer, seized as prize by a German aeroplane on the high seas, declared good prize by a German prize court, and

⁴⁴ *Entscheidungen des Oberprisengerichts in Berlin*, p. 17.

⁴⁵ *Ibid.*, 1914, p. 1; 10 *American Journal of International Law*, p. 909.

⁴⁶ It was pointed out by Sir Samuel Evans in *The Moeve* [1914] 1 *British and Colonial Prize Cases*, 60, 74, that the French "en mer" in Article 3 of the Sixth Convention is not accurately translated by "on the high seas;" "where the Conventions intend to describe 'upon the high seas,' the appropriate phrase 'en pleine mer' is used."

⁴⁷ *The Comte de Smet de Naeyer* (1916) *Entscheidungen des Oberprisengerichts in Berlin*, p. 209.

⁴⁸ Huberich & King, *The Development of German Prize Law*, 18 *Columbia Law Review*, p. 503, 514.

⁴⁹ Liszt, *Das Völkerrecht* (2d ed., 1902) p. 317. Cf. 1 Pistoye et Duverdy, *Prises Maritimes*, (1859) p. 112.

⁵⁰ See the *Moniteur Belge*, 1920, p. 405. The decision of the Belgian Council of Prizes is translated in 16 *American Journal of International Law* 117.

⁵¹ See the *Moniteur Belge*, Nov. 6, 1919, p. 5894. The decision of the Belgian Council of Prizes is translated in 16 *American Journal of International Law* 127.

⁵² *Ibid.*, 1919, p. 5772. The decision of the Belgian Council of Prizes is translated in 16 *American Journal of International Law* 129.

captured by Belgian troops in a floating dock in the port of Zeebrugge. In all of these cases, the Belgian Council of Prizes upheld the Belgian capture and declared the vessels to be the property of the Belgian State.⁵³ But as the seizures were effected in Belgian waters the cases are of little value in distinguishing land and naval captures.

THE DANUBE ARBITRATION

Among the numerous claims which came before the American arbitrator named under Article 300 of the Treaty of St. Germain, of September 10, 1919, was a claim by Roumania that seizures of enemy-owned boats on the Danube, effected by Roumanian naval officers, were to be "regulated by the international law pertaining to naval warfare, and therefore ought to be upheld."⁵⁴ In rejecting this claim, Mr. Hines stressed the facts that the vessels in question were devoted to inland and not to maritime navigation; that they were registered in or identified with river ports; that they had not been taken on the high seas; and that at the time of their seizure they were engaged in inland navigation between Danube ports in Roumania and Danube ports farther up the river. "The sole reason which can be suggested in order to justify the confiscation of such private property, contrary to the principles of land warfare, is the claim that the vessels were seized by officers who, although located in the ports of the river, were designated as naval officers. The arbitrator is of opinion that such a distinction would be devoid of substance under all the circumstances surrounding these particular seizures."

In view of the large competence conferred upon him by Article 300 of the Treaty of St. Germain, Mr. Hines found that the Roumanian prize courts had been ousted of any jurisdiction they might otherwise have had to pass upon the validity of seizures of Danube river vessels. But he stated that "certainly it is the exception rather than the rule that river vessels concerned in inland navigation are made the subject of proceedings in prize courts,"⁵⁵ and so he held that Article 378 of the Treaty of St. Germain, relative to prize court proceedings, did not apply to Danube river vessels.

⁵³ See also *The Roelfina*, 16 American Journal of International Law 136, as to which the facts as to the Belgian capture are not so clear. Other Belgian decisions are reported in the British Year Book of International Law, 1921-22, p. 183 ff.

⁵⁴ Hines, Determination in the Matter of Questions Arising as to Danube Shipping, p. 21.

⁵⁵ "It may be mentioned that the Roumanian decree relative to the organization of the jurisdiction of maritime prize declares in Ch. I, Art. I, that the Roumanian state has the right to capture vessels serving as means of transport by waterways inscribed in official registers of the merchant marine. Likewise the Roumanian code of prize maritime jurisdiction declares in Ch. I, Art. I, that every navigable object of whatever nature inscribed in the registers of the merchant marine of the different states is regarded as a vessel of commerce. This indicates that maritime jurisdiction relates at least primarily to marine vessels." Hines, Determination in the Matter of Questions Arising as to Danube Shipping, p. 6.

REGULATION AT THE HAGUE CONFERENCES

The Hague Conventions concerning land warfare deal especially with the seizure of boats, in Article 53 of the regulations annexed to each of the Conventions.⁵⁶ The substance of this provision had previously been included in the unratified *projet* of an international declaration concerning laws of war, adopted at the Brussels Conference in 1874.⁵⁷ Article 6 of that *projet* permitted the seizure by occupying armies of boats "*en dehors des cas régis par les lois maritimes*," and provided for their return at the end of the war. At the Brussels Conference the insertion of this expression was the consequence of a request by the Spanish representative to insert after the word "vessel" the expression "*appartenant à la navigation des lacs du continent, des fleuves et rivières qui ne sont pas navigables, en communication avec la mer*";⁵⁸ and he stated that it was his purpose to indicate clearly that no attempt was being made to deal with maritime law. The words finally inserted were suggested as a substitute by the Belgian representative who thought they would satisfy the desire of the Spanish representative. In the Hague Conference of 1899, the text of the Brussels regulation was changed, but these words of the Brussels Declaration were kept; and in the Conference of 1907 they were not materially modified.

One of the commissions of the Hague Conference of 1907 which had been considering amendments to the regulations annexed to the second Convention of 1899, dealt with the significance of these words. The *rapporteur* for the commission, Major-General Baron Giesl von Gieslingen, gave the following account of the commission's deliberations:

Le Délégué militaire du Japon a rappelé à cette occasion les réserves qui avaient été formulés par sa Délégation au sein de la Sous-Commission relativement à l'addition des mots 'sur mer,' une pareille disposition lui paraissant relever plutôt du programme de la Quatrième Commission. Cependant, le Comité a cru devoir les maintenir, en considérant que le droit de capture maritime peut s'appliquer dans une guerre continentale au cas de navires saisis dans un port par un corps de troupes, notamment en ce qui concerne les navires destinés à la navigation fluviale.⁵⁹

This seems to be a statement that maritime law would apply to boats seized in a port by land forces, particularly if the boats are destined for river navigation; but no reason is given, and it is very difficult to see why maritime law should apply "*notamment*" to boats destined for river navigation unless they are ocean-going boats. Commentators on the Hague Convention

⁵⁶ The second Convention of 1899 and the fourth Convention of 1907. Higgins, *Hague Peace Conferences*, p. 206.

⁵⁷ *Actes de la Conférence de Bruxelles*, p. 363.

⁵⁸ *Actes de la Conférence de Bruxelles*, p. 154.

⁵⁹ *Actes et Documents*, 1907, III, p. 27.

seem to have given very little attention to this expression,⁶⁰ but it was referred to by counsel in *The Thalia* as follows:

Admitting that capture may be made on rivers and lakes, which are not included in territorial waters, then there must be steamers and other kinds of vessels beside those afloat on rivers and lakes which are not governed by the rules of maritime law; because such vessels are recognized in the second paragraph of Article 53 of the Hague Treaty.⁶¹

SUGGESTIONS AS TO LEGISLATION

At the 1913 meeting of the Institute of International Law, an attempt was made to include in the manual of laws on maritime war a paragraph which would have had the effect of freeing craft on inland rivers from naval capture.⁶² Although the Institute refused to go so far, it did agree to add river boats navigating rivers, canals and lakes to the class of boats which should be exempt from capture because engaged in small local navigation.⁶³ And it is interesting to note that the Institute's *règlement* for international rivers, adopted at Heidelberg in 1887, provided for applying to floating property on international rivers the same treatment as that accorded to enemy property in war on land.⁶⁴

At the 1920 meeting of the International Law Association, the British Maritime Law Committee submitted a report on the laws of naval war which

⁶⁰ See Lawrence, *International Law* (5 ed.) p. 441; Spaight, *War Rights on Land* (1911) p. 416.

⁶¹ (1905) Takahashi, *Russo-Japanese War*, p. 606. Article 53 of the Regulations was also construed by the Italian court in an opinion reported in Fauchille et Basdevant, *Jurisprudence Italienne en Matière de Prises Maritimes*, p. 203: "L'article 53 de ce règlement déclare en effet que les forces militaires qui occupent un territoire peuvent s'approprier les moyens de transport et en général toute propriété mobilière de l'État de nature à servir aux opérations de guerre." And see *ibid.*, p. 500. In *The Anichab* (1919) Probate 329, Article 53 was applied, at least by way of analogy, but Lord Sterndale refused to admit that the Prize Court had jurisdiction to fix the indemnity for which the article provides. Mr. Walker D. Hines, in the Determination in the Matter of Questions Arising as to Danube Shipping, pp. 9, 10, expressed the opinion that Article 53 applied only "to military authority over hostile territory that is actually placed under the authority of the belligerent army"; and he held that Article 53 "does not contemplate war material in actual hostile use at the time of seizure."

⁶² *Annuaire de l'Institut de Droit International*, 1913, p. 191.

⁶³ Article 47 of the Oxford Manual of the Laws of Maritime War provides: "Les bateaux exclusivement affectés à la pêche côtière, ou à des services de petite navigation locale, y compris ceux exclusivement affectés au pilotage ou au service des phares, comme aussi les navires destinés à naviguer principalement sur les fleuves, canaux et lacs, sont exempts de saisie, ainsi que leurs engins, agrès, appareils et chargements." *Annuaire de l'Institut de Droit International*, 1913, p. 654.

⁶⁴ "Article 40.—En cas de guerre entre les États riverains, la propriété flottante sur un fleuve international, sans distinction entre la propriété neutre et la propriété ennemie, sera traitée suivant l'analogie de la protection de la propriété ennemie en cas de guerre sur terre." *Annuaire de l'Institut de Droit International*, 1888, p. 187.

was drafted by a very able sub-committee.⁶⁵ This report does not appear to have been adopted by the Association,⁶⁶ but it may be taken as some evidence of current opinion. The code of naval warfare embodied in the report deals with "the places where hostilities may be carried on" and provides: "The special rules relating to maritime war are only applicable to the open sea and the territorial waters belonging to or occupied by the belligerents, to the exclusion of those waters which, in respect of navigation, cannot be considered as maritime."

These authorities seem inadequate for drawing a confident conclusion as to the general applicability of the law of maritime warfare or the law of land warfare to captures on inland rivers. Taking the language of the earlier texts, one might conclude that the law of maritime capture is generally applicable; but this language is almost invariably used with reference to cases of seizures by naval forces or to cases in which the jurisdiction of prize courts is being defined.

FACTORS TO BE CONSIDERED

Three factors must be considered in determining whether a particular capture is to be governed by the law of land, or by that of maritime, warfare: (1) the locality of the seizure; (2) the nature of the property seized; (3) the character of the force making the seizure.

A seizure of an enemy vessel made within a belligerent's own territorial waters at the outbreak of hostilities would seem to be subject to the municipal law and its provisions for dealing with enemy property. Perhaps the liberal protection, which had so generally been accorded to enemy property prior to 1914, cannot now, in the light of recent experience, be said to be required by international law.⁶⁷ The municipal law is usually made to conform with general international usage, as in the sixth Hague Convention dealing with the treatment of ships in port at the commencement of hostilities. Enemy ships seized within a belligerent's own territory need be submitted to the jurisdiction of prize courts only for the satisfaction of neutrals. Within a belligerent's own territory, then, the problem is not so likely to arise as to the limits of land and sea warfare,⁶⁸ although the problems of

⁶⁵ Report of International Law Association, Twenty-Ninth Congress at Portsmouth, 1920, p. 169.

⁶⁶ *Ibid.*, p. 224.

⁶⁷ Cf. *In re Ferdinand, Ex-Tsar of Bulgaria* [1921] 1 Ch. 107.

⁶⁸ One may query Professor Oppenheim's suggestion that as the seizure of means of transport is, according to Article 53 of the Hague Regulations, permissible in occupied enemy country, provided they are restored and indemnities paid after the conclusion of peace, "seizure must likewise—under the same conditions—be permissible in case these articles are on the territory of a belligerent." Oppenheim, *International Law* (2d ed.) II, p. 140. If municipal law governs as to seizures on a belligerent's own territory, Article 53 may be in no way applicable.

prize court jurisdiction and the distribution of prize money may be just as important as when the seizure is made elsewhere.

But where a seizure is made in the territorial waters of the enemy, the question is plainly governed by international law. If the seizure is made in an enemy seaport and made by naval forces, there would seem to be no reason for not applying the same law as if it were made on the high seas. Nor would it seem material that the port is an inland port not open to maritime navigation, though in such ports neutrals are less likely to be concerned. The limitation in the Italian code that naval operations should be confined to territorial waters open to maritime navigation seems to have little to recommend it. On a large river like the Mississippi or the Danube, in spite of recent armament developments, it might still be possible to have extensive operations conducted by gunboats, and they might effect captures in ports where maritime navigation is excluded. If this has not been entirely excluded by long-range guns, the Italian limitation on naval capture seems impracticable. It would call for a special rule for large bodies of water like the Victoria Nyanza.

Something may be made to depend on whether the boats seized are ocean-going or devoted to inland navigation. The suggestion of the Italian court that it would be absurd to permit an ocean-going vessel to escape maritime capture by taking refuge in a river would seem to call for an application of maritime law to all captures of ocean-going vessels on inland rivers; but the possibility of capturing non-ocean-going vessels at sea will seldom exist, and land law might very well be applied in dealing with them. The two types may differ also in capacity to escape a belligerent's power and therefore to continue in enemy service; but a non-ocean-going vessel on a large highway like the Danube might easily elude belligerent capture by a voyage on the river. Since many river craft are small and engaged in local work for small traders, the same arguments which led to the exemption from maritime capture of small boats employed in local trade in the eleventh Hague Convention of 1907, would seem to call for some exemption for most river vessels,⁹⁹ and this would seem to be an argument for the more lenient consequences of applying land law.

The nature of the force effecting the seizure seems also an important factor. To apply maritime law to seizures made by land forces would greatly complicate the operations of armies which are accustomed to deal with booty much more summarily than naval forces deal with prize. In some cases of continental warfare, it would mean that the title to property seized on rivers would have to await the adjudication of prize courts in order to satisfy neutrals. Armies act less formally in seizing property, and in seizing many kinds of property the distinctions usually possible in maritime warfare would

⁹⁹ These arguments did not prevail during the past war as to tugs and lighters in a port, however. *Deutsche Kohlen Depots* (1916) 2 British and Colonial Prize Cases 439, [1919] A. C. 291.

be impracticable. Access to prize courts would be most difficult with respect to some river craft, unless tribunals could be set up *ad hoc*. To take an extreme case, a European army operating on an American river could not possibly take small river craft, which it might seize, into a port where there is a prize court. The procedure in prize courts has been built up with reference to vessels which can navigate the high seas,⁷⁰ and some changes would be needed to make it adequate for the condemnation of river craft.

Mere analysis of our existing formal conceptions will not solve the problem. The line will be drawn, with reference to specific inclusions and exclusions, as considerations of policy or convenience at the time dictate. During the past century there was a clear tendency toward relieving the owners of private property of many of the burdens of warfare. In the law of warfare on land this tendency has gone very far, and it finds some expression as to river boats in Article 53 of the regulations annexed to the Hague Convention. Since the Brussels Conference of 1874 concerning the customs of war on land, the current of opinion seems to have supported the more lenient treatment of river vessels accorded by the law of warfare on land. Effectiveness in the conduct of land operations would seldom be diminished if land law rather than maritime law were applied to the capture of river boats.

A simple case for applying land law would be that of the seizure by an invading or occupying land force of a non-ocean-going vessel on an inland waterway or in an inland port. On the other hand, a simple case for applying maritime law would be that of the seizure of an ocean-going vessel by naval forces on an inland waterway open to maritime navigation. To cases between these two extremes, the application of the one or the other law cannot be forecast with certainty.

If the distinction will not often be of great importance, it ought nevertheless to be kept in mind by the draftsmen of any future conventions on the laws and customs of war on land or at sea.

⁷⁰ E.g., the law as to "Custody of the Res," on which see Tiverton, *Prize Law* (London, 1914), p. 65 ff.

THE RIGHTS OF VISIT AND SEARCH, CAPTURE, ANGRY AND REQUISITION

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That the laws of nations with respect to the right of visit and search, and the right of capture were well defined and established in 1914 can not be doubted. The best proof that there were such laws in force is the fact that there was not in the sisterhood of nations a single enlightened state whose prize courts had not undertaken to interpret and administer them, and to award damages for their violation. The interpretations of these courts may have varied, just as the interpretations of statutory law vary among the municipal courts of the same state, but there were, nevertheless, such laws, and they were interpreted. Furthermore, it would appear that by the courts of Great Britain and the United States in particular, they were interpreted and administered with as high a degree of uniformity as the same law is ordinarily interpreted and administered by the courts of two or more different states of the American Union.

From the British and American decisions prior to 1914 it appears that the rights of visit and search, and of capture are deemed to be inherent to the status of belligerency. But they are in no sense the equivalent of an indiscriminate right to seize, harry, or interfere with neutral commerce.

Of the two rights mentioned the right of capture is necessarily the greater one. It is much misunderstood, which readily appears from the fact that even the courts and the text writers constantly speak of unlawful captures when there can be no such thing.

No belligerent has the right to seize a neutral ship unless it is *believed* that the vessel is engaged in some *unneutral service*, or that the cargo, by reason of its *character* or *destination* will, if unmolested, be of *direct aid* to the enemy in the prosecution of the war.

An examination of the authorities will show, however, that a mere *belief* that a ship is liable to capture is not sufficient. The belief must be founded upon evidence sufficient to justify the same. Oppenheim clearly states the law as follows:

According to customary rules of International Law, adopted also in the unratified Declaration of London, a neutral vessel may be captured if visit or search *establishes the fact*, or *arouses grave suspicion*, that she is rendering unneutral service to the enemy.¹

¹ Sec. 411, Vol. II, page 596.

It must not be assumed from this statement of the law that visit and search are prerequisites of capture. Capture may be made outright without a visitation or a search, upon exactly the same grounds that would justify the latter.

Circumstances creating a reasonable suspicion of conduct warranting her capture are sufficient.²

Thus, it is seen that a seizure is a capture only when it is made upon certain justifiable grounds, and that when the requisites of a lawful seizure exist the seizure becomes a technical capture in the sense of the law. Therefore, there can be no such thing as an unlawful capture since a seizure that is not lawful is not a capture.

Then, too, great confusion has resulted from the inexact use of the terms capture and prize.

Prize, in maritime law, is the apprehension and detention at sea of a ship or other vessel, by authority of a belligerent power, either with the design of appropriating it, with the goods and effects it contains, or with that of becoming master of the whole or a part of its cargo.³

This definition of the word prize relates to the act of taking the property seized. It is clearly the definition of a verb. Neutral vessels and their cargoes that have merely been captured but have not been adjudicated to be prize, are not prize, and should not be spoken of as such.

Where there is a *probable cause* to believe that a vessel is liable to capture, it is proper to take her and subject her to the examination and adjudication of a prize court.⁴

Until the capture becomes invested with the character of prize by sentence of condemnation, the right of property is merely in abeyance, or in a state of legal sequestration.⁵

Prize includes enemy property that has been *captured* on the high seas or in territorial waters belonging either to the captor or to the enemy, and the property of neutrals that has been *captured and condemned* to confiscation by way of penalty. Thus, it is seen, that enemy property becomes prize so soon as it is captured, whereas, neutral property that is captured does not become prize until it has been condemned.

How absurd then is the frequent use of such an expression as "the unlawful capture of prize," an expression which is conclusive either of extreme ignorance of the law, or an extreme carelessness on the part of those employing it.

But prize, unlike capture, may be either lawful or unlawful. This must appear from a consideration of the purpose of capture.

The purpose of capture is two fold. On the one hand it is to prevent the

² *The George*, Fed. Cas. No. 5, 328.

³ 1 C. Rob. 228. Bened. Adm. Sec. 509.

⁴ *Talbot v. The Amelia*, 4 Dall. (U. S.) 34.

⁵ Wheaton's International Law, 5th Eng. Ed. p. 58, referring to Tudor's Leading Cases on Maritime Law, pp. 1092, 1093, and Calvo, II, Sec. 1236.

enemy from receiving the unlawful neutral aid which it is believed a vessel and its cargo, either or both, may contribute if the vessel be allowed to proceed. On the other hand it is to enable a legal proceeding to be initiated in order to ascertain whether in fact the vessel and the cargo which have been detained merely as a precautionary measure in the first instance, are capable of contributing unlawful aid to the enemy and are subject at law to the penalty of condemnation as prize for attempting to do so.

Obviously, therefore, since a legal proceeding is necessary to determine the facts, and it is lawful to detain the vessel for that purpose, the seizure may be lawful, or a capture, whereas the proceedings may establish the entire innocence of the vessel or its cargo, and the consequent immunity of either or both from the penalty of condemnation as prize. Again, the lawfully seized, or captured vessel may be unlawfully condemned as it would be if confiscated as prize without due process of law, or upon insufficient evidence of an unneutral character or mission. In the latter case the offense at international law consists not of the capture but of the condemnation of an innocent vessel, for the seizure was lawful while it was the condemnation that was unlawful. Therefore, while it is highly improper to speak of property unlawfully captured as prize, it is entirely correct to speak of captured property being unlawfully condemned as prize.

From the foregoing we may conclude that if a belligerent seize a neutral merchant vessel on the high seas without a justifiable belief that the vessel or its cargo is liable to condemnation as prize, the seizure is not a capture but an unlawful seizure, and the case is not one of prize but a mere violation of the sovereign right of jurisdiction of a neutral state, being no more nor less than unwarranted interference with neutral commerce in derogation of the neutral rights.

So, too, we may conclude that if a belligerent capture a neutral vessel on the high seas and appropriate to its uses the vessel and its cargo, either or both, before the property confiscated has been adjudicated by a prize court to be subject to the penalty of condemnation as prize, the appropriation amounts to no more nor less than the confiscation of neutral property on the high seas for which there is no sanction at international law.⁶

Growing out of and ancillary to the greater right of capture is the right of visit and search.

Said Chief Justice Marshall in *The Nereide*:

What is this right of search? Is it a substantive and independent right wantonly, and in the pride of power, to vex and harass neutral commerce, because there is a capacity to do so, or to indulge the idle and mischievous curiosity of looking into neutral trade, or the assumption of a right to control it? . . . But this is not its character.⁷

⁶ A seizure of this character is entirely different from the requisition of neutral property and the taking of neutral property under the exercise of the right of angary, as will appear later.

⁷ 9 Cranch, 388, 427.

The idea that a belligerent may stop, visit and search every merchant vessel on the high seas with impunity in order to determine its character is a wholly erroneous one which finds no sanction whatever in law. Like the right of capture the right of visit and search may only be exercised upon certain well defined conditions. There must at least be a reasonable suspicion that a vessel or its cargo is of an unneutral character to justify its exercise. A visit and search not made upon reasonable grounds of suspicion are no less unlawful than a seizure made under similar circumstances.

While the purpose of a visitation and search is merely to determine more surely whether or not the vessel is subject to capture, visitation and search are in no sense prerequisites of capture. Where the greater right may be legally exercised, that is where a reasonable suspicion as to the hostile character of the vessel or cargo already exists, the vessel may be captured without search, and taken into port to be dealt with by a prize court.

If the law of visit, search and capture be as stated, it would seem that visit and search, when made in good faith and in a proper way, should be welcomed rather than resented since they may disclose the fact that the suspicion which would have justified a capture and detention pending prize proceedings is ill founded, and that the vessel is innocent and should be allowed to proceed on her way without further detention.

But this is by no means the case. The national mind not having kept pace with the evolutions of international law, there remains a prejudice against the exercise of this belligerent right even in accordance with old methods, it being the popular conception that the acts of visitation and search are indignities to which only the most reluctant submission is due. It is, of course, a wholly erroneous conception, tracing back as it does to a time when these acts were performed by virtue of *vis major* rather than by virtue of right at law.

Bearing in mind the law as to visit and search, capture, and the seizure of neutral property on the high seas, let us now examine the radical departures that were made during the late war from the practices sanctioned by that law.

In 1914 the Allies found themselves in a novel situation. Germany by the successful invasion of Belgium and a part of France had cast her western line of defense beyond the neutral states of Denmark and Holland, while Sweden also fell within the area which was denied to the Allies. As time wore on it became apparent that the Central Allies could not be defeated unless they were economically strangled by a blockade which, to be effective, had to infringe upon the freedom of neutrals as it had hitherto existed, a complication that arose directly from the fact that neutral states were wholly within the lines of circumvallation which the Entente of necessity had to throw about Germany's military and naval forces. Viewing the resulting situation in a broad way it is apparent that the hardships of the neutrals within the Allied lines of circumvallation resulted in a measure from their inability to free their territory from Germany's embrace as well as from the restrictions imposed by

the blockading Powers. Their position was somewhat similar with respect to the results to that of neutral persons who are caught in a beleaguered city and yet, for physical reasons are unable to free themselves from the besiegers' lines.

Under the novel circumstances described it was inevitable that new practices should develop as to visit and search, and the seizure of neutral shipping and goods destined for the beleaguered areas. Not only had the growth in the size of steamships necessitated in many instances that a vessel be conducted long distances out of its course to calm water to enable it to be visited, but the cargoes which these enlarged vessels bore were of such immense volume and bulk that they could not be thoroughly searched at sea however long the vessel might be detained. Loaded by expert stevedore crews at wharves equipped with special machinery, and with scientific regard to the character and placing of the various components of the cargo, obviously their cargoes could not be displaced with the means available at sea; consequently they could not be thoroughly searched. And even had it been possible to search the cargoes, an amount of time would have been required that was prohibitive of search in view of the ever present danger from hostile submarines. Inevitably, therefore, Great Britain, or the leading maritime belligerent, soon instituted the practice of taking neutral ships into British ports and there detaining them for the purpose of searching for contraband.

In December, 1914, the State Department of the United States, admitting readily the full right of a belligerent to visit and search on the high seas the vessels of American citizens or other neutral vessels carrying American goods, and to detain them, when there was sufficient evidence to justify a belief that contraband articles were in their cargoes, protested against the new British practice. Great Britain responded that the undoubted right to visit and search would become a nullity if the old methods were pursued, and, undeterred, continued her course with respect to neutral shipping throughout the war.

On March 1, 1915, the State Department was informed by the British Embassy at Washington that by reason of alleged illegal practices on the part of Germany, her opponents were driven to frame retaliatory measures in order to prevent commodities of *any kind* from reaching or leaving that country. It was declared that these measures would be enforced by the British and French Governments without risk to neutral ships or to neutral or non-combatant life, and that Great Britain and France would, therefore, hold themselves free to detain and take into port neutral ships carrying goods of presumed enemy destination, ownership or origin. On March 11 and March 13, 1915, Great Britain and France issued an Order in Council and a Presidential Decree, respectively, putting into effect the announced policy.

The State Department promptly protested against the enforcement of the British Order in Council of March 11, 1915, declaring that it would constitute, were its provisions to be actually carried into effect as they stood, a practical

assertion of unlimited belligerent rights over neutral commerce within the whole European area, and an almost unqualified denial of the sovereign rights of the nations then at peace. "A nation's sovereignty over its own ships and citizens under its own flag on the high seas," unlimited in time of peace, was said by the Secretary of State to suffer no diminution in time of war, except in so far as the practice and consent of civilized nations had limited it by the recognition of certain clearly determined rights, which it was conceded that a belligerent might exercise, such as the rights of visit and search, and capture, and from this position the United States has never receded. The novelty of the practices of the Allies which have been described will appear very readily if it be attempted to bring them within the established rights of belligerents at international law with respect to the appropriation of neutral goods.

Many seizures by the Allies were made without any reasonable ground for a presumption that the property taken was of an unneutral character. The seizures cannot be said to have been made in the exercise of the old and more or less obsolete right of angary (*jus angariae*) which has never been held to apply to neutral shipping except when the vessels appropriated by a belligerent to its uses were in the territorial waters of the belligerent at the time they were impressed. Even according to those authorities which hold that the right of angary still exists as a belligerent right, the neutral property that is liable to seizure thereunder, either for use or destruction, must be temporarily at least within the territory of one of the belligerents, and the use or destruction thereof must be impelled by necessity.

In 1863 an Act of Congress provided that the Secretary of the Navy and the Secretary of War might requisition any captured neutral vessel, arms, or munitions of war or other material for the use of the Government, before adjudication by a prize court, or afterwards. Great Britain protested against the provisions of this act at the time it was passed, and the Attorney General of the United States held that there was no warrant for it in international law. In *The Zamora*,^{*} the Judiciary Committee of the Privy Council of Great Britain also condemned the act of 1863, and held that the right to requisition neutral ships and their cargoes only exists when they have been captured and brought into a prize court for adjudication, and when the property to be taken is urgently required for use in connection with the defense of the realm, the prosecution of the war or other matters involving national security. Furthermore, it was expressly declared that it was for the court, and not the executive of the belligerent state to decide whether the right can be lawfully exercised in a particular case, and that in the absence of a real or bona fide question in prize no application for the requisition of neutral goods before condemnation would be entertained by the court else seizures known to be unwarrantable by law and, therefore, not captures at all, would be encouraged as a means by which a belligerent might obtain useful property.

By reason of the fact that the novel practices described, and many others,

^{*} 4 Lloyd's Prize Cases, 62 (1916).

were adopted by the belligerents during the late war, one often hears it said by members of the legal profession as well as by laymen that today there is no international law. If this statement be analyzed it will be seen to be about the equivalent of a statement that because certain elements of a frontier population invariably are able during the early period of settlement to run things pretty much their own way in the absence of representatives of the law in sufficient force to control them, there is no municipal law. But, after the centuries of toil and suffering which the ever-enlightening mind of mankind has devoted to the establishment of order, are we to admit that whenever, by reason of local conditions it becomes possible and advantageous to ignore the law as it has existed, we may do so with impunity?

The question answers itself. But while it is absurd to contend that violations of law do away with the law, whether a law will continue to be enforced is another question. As a general proposition it may be stated that no law that is not based upon reason will long continue to be respected, and when not held in respect its enforcement or attempted enforcement will lead to its repeal.

The situation today is that the law is well established but it is being ignored, and in its present form will probably continue to be ignored.

Although for political reasons full reparation may be made for every violation of the law of which England and France were guilty during the late war, in view of their experiences, and especially those of Great Britain, it is not likely that they will ever again observe the old rules. This being so, it is a matter of grave concern to amend the existing law in such way as to render the same acceptable to all the powers who must be relied upon to enforce the law of nations. Else in fact there will be no international law worthy of the name. Nothing is more essential to the sanctity of any code of law than that dead letters be removed from the statute book. If it be that merchant vessels cannot be searched effectively on the high seas let the fact be admitted and the law be amended accordingly.

The right of visit and search as it now exists is in no sense exercisable in diminishment of the sovereignty of neutral states whose merchant vessels on the high seas are subject to visit, search and capture, but is derived from the sovereignty of the belligerent state exercising the right. In other words, while the right of exclusive jurisdiction over its merchant vessels on the high seas and the persons thereon, is a sovereign right in a neutral state, it is also a sovereign right in a belligerent state to determine whether a merchant vessel on the high seas is within the exclusive jurisdiction of the neutral state whose protection is claimed by the vessel to be searched. Thus, it is seen that in submitting to the visitation and search of its merchant vessels on the high seas a neutral cannot be said to yield anything out of its own sovereignty to the belligerent. Why then, if conditions have so changed as to make it impracticable to exercise these rights in the old way, should they not be exercised in some practical new way?

The exclusive jurisdiction of a neutral state extends to its merchant vessels on the high seas as well as to the land and waters within its territorial limits. Heretofore search has only been lawful on the high seas, or in one part of the jurisdiction of a neutral state. If when made on the high seas it was not in derogation of the neutral's right of exclusive jurisdiction, why should the search be deemed to be in derogation of the neutral's jurisdiction if made within the other part of the neutral's jurisdiction?

Surely, the prejudice of narrow nationalism should not be permitted to reduce the code of international law to a state of obsolescence. If it can be revived by amendment so as to regain for it the universal obedience of the sisterhood of nations it should be amended. Nothing is more fatal to the spirit of respect for law than the tolerated abuse of law.

Would not the inspection of neutral vessels at the port of departure by agents of the belligerents through whose cordons the vessels were to pass, and the granting to them upon reasonable conditions of belligerent licenses, accomplish every object which search on the high seas may accomplish? Undoubtedly such a system would save all parties great annoyance and much expense in delays in transit. It would be no more subversive of neutral rights and dignity than the boarding and search of neutral ships on the high seas—less so than the herding and detention of them in belligerent ports.

In addition there might be required of vessels destined to certain prescribed neutral ports certificates of innocent character from the state whose flag they fly. The necessary examination for the granting of a belligerent license could be made in conjunction with that upon which the certificate of innocence would be based, so that the exercise of the belligerent right of search would be thoroughly regulated and controlled by the neutral state. This, too, would tend to relieve visit and search of its present vexatious characteristics, and to overcome the lingering prejudices against the exercise of the right.

Under such a system unlicensed and uncertified neutral vessels, destined to proscribed ports, would by reason of the lack of the required credentials be subject to capture, and no licensed and certified vessel proceeding to those ports would be subject to visit and search, or capture on the high seas, unless its conduct after leaving port were of such a character as to justify the revocation of the belligerent license. The question of what neutral ports might be proscribed would be one for diplomatic adjustment between the neutral and belligerent states, and would thus be done away with as a question of dispute between neutral nationals and belligerent states in the prize courts of the latter.

As to the appropriation of neutral goods seized on the high seas the law does not require to be amended. If an unlicensed and uncertified vessel destined to a proscribed port were seized, the seizure would be a capture which is presently lawful, and the vessel and its cargo would merely be liable to condemnation as prize by the adjudication of a belligerent prize court. On the other hand, if a neutral vessel not destined to a proscribed port, or a duly

licensed and certified vessel were detained for search, or seized, or interfered with in any way except for the purpose of examining its credentials, the interference would be an out and out invasion of neutral rights for which the belligerent offender would be answerable at international law.

While the law as to the unwarranted seizure of neutral property by a belligerent is well settled, the theory of liability upon which damages are assessed therefor requires to be revised.

At common law the same act may constitute a crime against the state and a tort. For the first the state exacts a penalty. For the second the persons whose private rights have been invaded may recover damages. And so, the same act might constitute a dual offense at international law. For instance, the wrongful seizure of neutral property by a belligerent might be held to constitute a public international offense, analogous to a crime, for which satisfaction of the neutral sovereignty would be due, and an international tort for which the belligerent offender would be liable in damages as a tort-feasor to the private owners of the property.

It is only the form—the name—of this proposal that is novel. The underlying principle has already been adopted by several of the leading belligerents in the late war. It was adopted by Great Britain in the celebrated case of *The Wilhelmina*, and by the United States in the case of *The Rijndam*; in both of these cases neutral property that had not been condemned was appropriated by a belligerent. In both compensation was based upon the principle of full indemnification, which is the same principle from which is derived the measure of damages in tort. In both the belligerent made full satisfaction to the state who claimed the allegiance of the owners of the property seized.

It may be difficult to work out the details of the necessary amendments to the laws of nations as they exist today, but it is a task by no means too difficult for the enlightened international mind if it be recalled and frankly admitted that only the law of change is changeless.

ORDERS IN COUNCIL AND THE LAW OF THE SEA

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I

In a maritime war the formal announcements of national executives concerning principles of intended action possess an interest frequently transcending the occasion calling them into being since they may originate important modifications in the imprescriptible system of the law of nations and thus become touched with that universality of which the sea itself offers so constant and striking a suggestion. In the conflicts of the French revolution and the First Empire, as well as in the great war of our own day, we find produced on the part of the opposing governments a series of declarations (orders in council, *arrêts*) which have a permanent interest for the student of international law since they practically extend over the whole field of naval warfare and reach every aspect of belligerent action upon the high seas, while they may also become a cause oftentimes of strained relations between belligerent and neutral Powers arising through widely varying views touching the application of prize law to marine captures. The modern law of nations recognized, moreover, essential divergences between principles which should govern the treatment of property falling into belligerent power upon land or those controlling its seizure on the ocean or in belligerent territorial waters, and the subject may easily become highly complicated when a severe measure of repression, aimed in the first instance at an enemy, strikes a neutral and subjects persons or goods not primarily or properly identified with the struggle to every peril of combatant fate.¹

Accordingly, when on February 1, 1793, war broke out between France and England, the ocean became at once a conspicuous theatre of hostilities. The destruction of enemy commerce furnished in its legal aspects a far-reaching and inexhaustible topic of discussion touching maritime rights or duties as coming within the scope of the *jus gentium* and continued to supply material for acrimonious or actually war-making difference during twenty years and until peace had suspended for a time at least the agitations of attempted world conquest. Scarcely, however, had the contest between British and French arms fairly begun when the merchants of leading neutrals,—conspicuously Holland and the United States,—determined upon the practical exploitation of opportunities likely to be offered by a war in which

¹ See Appendix, paragraph 1, page 410.

each of the chief contestants possessed rich colonies beyond the Atlantic and whose colonial products were of the first importance to Europe generally, although, in so far as France was concerned the physiocratic idealists claimed to find in the agricultural resources of their own country supplies adequate to every requirement and whose sufficiency justified a scornful view of British commercialism. To strike, consequently, at Britain's sea-borne traffic became at every period of the struggle a fixed aim of the French Republic and Empire, and as an inevitable sequence of such a determination there soon appeared disputes of great bitterness, not alone with the English Government, but with neutral Powers as well, touching the violation or maintenance of acknowledged canons of international law as between belligerents and again between belligerents and neutrals.²

In these fields, somewhat vaguely defined, the differences were grouped about conceptions of blockade, contraband, convoy, the colonial carrying trade and the coasting trade regarded as state monopolies normally closed to all but nationals, together with the closely-related British conception of *entrepôt* (deposit) as applied specially to colonial commerce and navigation. Briefly stated, questions concerning blockade centred upon attempts to merely declare or proclaim a blockade of a coast line frequently of such great extent that it was quite beyond the power of the declaring belligerent to actually guard all approaches to the invested places, which were thus sought to be closed by mere empty "proclamation" as the term ran. In the matter of contraband, there evidently existed a wide margin for interpretation of what merchandise with enemy destination should be held confiscable as essentially appropriate to warlike use; in many treaties an effort had been made to standardize this vexed subject through agreed contraband lists, though always, and of necessity, without permanent result. Again, the colonial and coasting trades opened practically illimitable fields instinct with elements of hostile action and debate, nor were the vast and mysterious stretches of the Atlantic itself more pregnant with storm and disaster than the now asserted rules of the law of nations governing trans-oceanic carriage of merchandise, especially between European colonies in the West Indies and their parent countries. The vital issues here turned upon transport of enemy property by *neutrals* eager to assume the advantages of trade from which a belligerent might be for the time excluded through its adversary's superior prowess at sea. But, it was asked, should a neutral be permitted thus to interpose its shield between enemies with manifest profit to itself and to the weaker belligerent as well? Again, should a neutral be permitted to conduct the coasting trade of this same weaker belligerent, regard being had to the undoubted fact that only the pressure of warfare on the part of a stronger enemy had induced the said belligerent to open his coasts along which theretofore, and in time of peace, traffic had been held inviolable as a state monopoly? Did not the neutral in such cases practically

² See Appendix, paragraph 2, page 411.

identify itself with enemy interests and hence convict itself of unneutral service?

Around these and allied problems there gathered those forces of opinion which resulted in the orders and *arrêts* which we are now to briefly examine and whose significance, it is hoped, will be more clearly exhibited in the texts themselves. In a perusal of these texts it will readily be noted that the opposing belligerents freely impute to each other wilful violations of all principles of international law and maintain that their standards can no longer be expected to conform in letter or spirit with an international code flagrantly disregarded. The essential intendment, however, of every decree and order will be plain enough if we but bear in mind the practically identical aims, though along different channels, of England and France, these aims contemplating the destruction or appropriation of each opponent's sea-borne commerce. On the one hand, the French standpoint demanded at whatever cost to France the isolation of England from every market. As an indispensable feature of such a purpose it was sought, in the first place, to effect a closing of the transatlantic colonial carrying trade between America and England. From the British point of view, not the closing, but rather the complete *control* of European coasting trade and transatlantic traffic was striven for, England to become the *entrepôt* or point of deposit *through* which all ocean commerce must pass or originate on its way to supply continental needs; foreign ports were to be open to commerce which had in this manner paid a British duty, while these same ports would otherwise be closed by either actual or proclaimed blockade. Of this *entrepôt* feature we shall have occasion to speak later at more length. Despite the economic fallacy here quite apparent, British commercial interests, it was confidently reasoned, might well be thought safeguarded since England would constitute a dutiable halting-place for world sea-traffic. There was evidently in this design small room for the interests or rights of American, Dutch, or Baltic Sea neutral shipping, nor need we be surprised at the early development of a singular naval warfare between the United States and France in 1798-1800, or at the large indemnities subsequently admitted as due to our merchants through illegal captures and condemnations.

On May 9, 1793, the National Convention at Paris issued the first of a series of memorable decrees declaratory of principles intended to be recognized by it in naval warfare. England replied by various orders in council, and soon neutrals were drawn within the circle of general disaster. This decree of May 9th announced the sequestration of provisions by way of retaliation for a similar course already taken by England:—

The National Convention, after having heard the report of their Marine Committee; considering that the flag of the neutral Powers is not respected by the enemies of France, that two cargoes of flour arrived at Falmouth in Anglo-American vessels, and purchased before the war for the service of the Marine of France, have been detained in England

by the Government, who would not pay for them, except at a price below that at which flour had been sold:

That a vessel from Papenburg, called the *Therisia*, commanded by Captain Hendrick Kob, laden with divers effects belonging to Frenchmen, has been conducted to Dover, the 2d of March last, by an English cutter:

That a privateer of the same nation has carried into the same port of Dover, the 18th of the same month, the Danish ship *Mercury*, Christianlund, Captain Freuchen, expedited from Dunkirk on the 17th with a cargo of wheat for Bordeaux:

That the ship *John*, Captain Shikleley, laden with near six thousand quintals of American wheat, bound from Falmouth to St. Malo, has been taken by an English frigate, and conducted to Guernsey, where the agents of the Government have simply promised to pay the value of the cargo because it was not on account of the French:

That one hundred and one French passengers of different professions, embarked at Cadiz, by order of the Spanish minister, in a Genoese ship called the *Providence*, Captain Ambrose Briasco, bound to Bayonne, have been shamefully pillaged by the crew of an English privateer:

That the divers reports which are successively made by the marine cities of the Republic announce that these same acts of inhumanity and injustice are daily multiplied and repeated with impunity throughout the seas:

That, under such circumstances, all the rights of nations being violated, the French people are no longer permitted to fulfill, towards the neutral Powers in general, the vows which they have so often manifested, and which they will constantly make for the full and entire liberty of commerce and navigation, decrees as follows:

Art. 1. The French ships of war and privateers may arrest and bring into the ports of the Republic the neutral vessels which shall be laden wholly, or in part, either with articles of provision belonging to neutral nations, and destined for an enemy's port, or with merchandise belonging to an enemy.

Art. 2. The merchandise belonging to an enemy shall be declared good prize, and confiscated to the profit of the captors; the articles of provisions belonging to neutral nations, and laden for an enemy's port, shall be paid for according to their value in the place to which they were destined.

Art. 3. In all cases the neutral vessels shall be released as soon as the unloading of the articles of provision arrested, or of the merchandise seized, shall have been effected. The freight thereof shall be paid at the rate which shall have been stipulated by the persons who shipped them. A just indemnification shall be allowed, in proportion to their detention, by the tribunals who are to have cognizance of the validity of the prizes.

Art. 4. These tribunals shall be bound to transmit, three days after their decision, a copy of the inventory of the said articles of provision or merchandise, to the Minister of Marine, and another to the Minister for Foreign Affairs.

Art. 5. The present law, applicable to all prizes which have been made since the declaration of war, shall cease to have effect as soon as the enemy Powers shall have declared free and not seizable, although destined for the ports of the Republic, the articles of provision belonging to neutral nations, and the merchandise laden in neutral vessels, and belonging to the Government or citizens of France.

The decree, it will be noted, affirmed the liability to capture as contraband of neutral owned provisions. But as specially applied in the case of such merchandise carried in ships of the United States, this was in plain contravention of the Franco-American treaty of amity and commerce concluded February 6, 1778, the 23d article of which declares:

It shall be lawful for all and singular the subjects of the Most Christian King, and the citizens, people and inhabitants of the said United States, to sail with their ships with all manner of liberty . . . from any port to the places of those who now are or hereafter shall be at enmity with the Most Christian King or the United States. . . . Also from one place belonging to an enemy to another place belonging to an enemy, . . . and it is hereby stipulated that free ships shall also give a freedom to goods, and that everything shall be deemed to be free and exempt which shall be found on board the ships belonging to the subjects of either of the confederates . . . contraband goods being always excepted.

Article 24 contains a contraband list.

In a frank recognition of this undeniable treaty obligation, and being urged by Gouverneur Morris, then in Paris, the National Convention soon announced that American vessels would not be subject to seizure under the *arrêt* of May 9th, though in the end less peaceable counsels prevailed and the way became thus opened to the "spoliations" which were destined to maintain so disastrous a rôle in our commercial history, and whose injuries, in part at least, have not been redressed by our own Congress even at the present day.³

The French decrees of special importance to us are nineteen in number, and extend in date from 1793 to 1810, closing with the celebrated *arrêt* issued on March 23rd of that year from the imperial and historic château at Rambouillet in the department of Seine-et-Oise twenty-nine miles southwest of Paris. Of similar British orders in council, there are some fourteen, closing with the resolution of May 24, 1809. The treatment of contraband, blockade, and enemy goods seized upon the vessels of neutrals, as well as the fate of such vessels themselves and of their crews, constitute the chief topics covered by these utterances.

Among causes of forfeiture under the French decrees we note the carriage of English goods or touching at or sailing from English ports, while in the later stages of the war, Napoleon, then emperor and dictator of Europe, did not scruple to allege a friendly enforcement on his part of the American embargo—a purely municipal and local measure—as a reason for the confiscation by France of United States merchantmen reaching French ports. Indeed, to effect the complete closure of British over-sea commerce became in

³ See the leading case of *Gray, Adm'r v. U. S.* in vol. 21, Court of Claims Reports, page 340 *seq.* for a complete account; also, articles in this JOURNAL by G. A. King, Vol. VI, pp. 359, 629 and 830.

ever-increasing degree Napoleon's aim, and this necessarily drew with it the annulment of colonial traffic, thus practically penalized, though for differing reasons, by both France and England. It was attempted also, on Napoleon's part, to compel the recognition by international law of certain principles formerly pressed, as we shall shortly see, by the armed neutrality leagues of 1780 and 1800 and embodied in a number of treaties. No such action could, however, incorporate a new doctrine into the system, in its essence universal and imprescriptible, of the *jus gentium*. Nor did any candid mind of that troubled era imagine for a moment that such a process was possible. Considerations of this nature, nevertheless, opposed no sufficient barrier to the theories at issue as causes of grave disturbance in the maritime world, and in our own day, as then, the same or kindred conceptions continue to produce problems well-nigh insoluble.

To the French Convention's announcement of May 9, 1793, the English Government at once replied by order in council:—

Additional instructions to the commanders of his Majesty's ships of war, and privateers that have or may have letters of marque against France. Given at our court at St. James's, the eighth day of June, 1793, and in the 33d year of our reign. George R. (L. S.)

1st. That it shall be lawful to stop and detain all vessels loaded wholly or in part with corn, flour or meal, bound to any port in France, or any port occupied by the armies of France, and to send them to such ports as shall be most convenient, in order that such corn, meal, or flour may be purchased on behalf of his Majesty's government, and the ships be released after such purchase, and after a due allowance for freight, or that the masters of such ships, on giving due security, to be approved of by the court of admiralty, be permitted to proceed to dispose of their cargoes of corn, meal, or flour in the ports of any country in amity with his Majesty.

2d. That it shall be lawful for the commanders of his Majesty's ships of war, and privateers that have, or may have, letters of marque against France, to seize all ships, whatever be their cargoes, that shall be found attempting to enter any blockaded port, and to send the same for condemnation, together with their cargoes, except the ships of Denmark and Sweden, which shall only be prevented from entering on the first attempt, but on the second shall be sent in for condemnation likewise.

3d. That in case his Majesty shall declare any port to be blockaded, the commanders of his Majesty's ships of war, and privateers that have, or may have, letters of marque against France, are hereby enjoined, if they meet with ships at sea, which appear, from their papers, to be destined to such blockaded port, but to have sailed from the ports of their respective countries before the declaration of the blockade shall have arrived there, to advertise them thereof, and to admonish them to go to other ports; but they are not to molest them afterwards, unless it shall appear that they have continued their course with intent to enter the blockaded port; in which case they shall be subject to capture and condemnation, as shall likewise all ships, wheresoever found, that shall appear to have sailed from their ports, bound to any port which his Majesty shall have declared to be blockaded, after such declaration

shall have been known in the country from which they have sailed, and all ships which, in the course of the voyage, shall have received notice of the blockade in any manner, and yet shall have pursued their course with intent to enter the same.

G. R.

Subsequently on November 6, 1793, Great Britain ordered the seizure of all vessels engaged in the French colonial carrying trade. This was a measure openly directed against neutrals, and was intended to put in force a principle of decision already familiar to British prize courts, known as the "Rule of 1756" from its having been employed during the Seven Years' War (1756-1763) to counteract the successful carriage of enemy colonial goods by neutral Dutch merchantmen, such carriage having been in time of peace a monopoly not open to foreigners. But now since French merchantmen could no longer, by reason of the British superiority at sea, themselves maintain this valuable colonial traffic—a traffic reserved by France theretofore exclusively to its own shipping,—it was held not consonant to principles of true neutrality that a neutral Power, under shelter of international law, should assume such a trade, thus practically relieving a disabled belligerent and *pro tanto* modifying or perhaps annihilating the well deserved maritime success of its opponent. The principle of monopoly as regards the coasting trade was in fact on September 21, 1793 openly declared by France to be in force: "*les bâtimens étrangers ne pourront transporter d'un port Français à un autre port Français anciennes marchandises des cru ou produit, ou manufactures de France, colonies ou possessions de France.*"

Phillimore has well summarized the bases of the rule of 1756 and its cognate principles as applied in British prize courts. He says:—

The shapes in which this abstract question became embodied were:

- (1) The carrying on by the Neutral of the trade between the Belligerent Mother Country and the Colonies.
- (2) The carrying on the coasting trade of the Belligerent—such trade being confined in time of war to the Belligerent's subjects.
- (3) The carrying on the trade by a Neutral from a port in his own country to a port of the colony of the Belligerent.
- (4) The carrying on the trade by a Neutral between the ports of the Belligerent, but with a cargo from the Neutral's own country.

"It is necessary," he added, "to bear in mind the distinction between these separate propositions; because, while the two former have obtained, under the title of the 'Rule of 1756,' the approbation of the best authorities in England and America, the two latter propositions have been powerfully attacked by the United States of North America as being vicious corruptions of a sound principle of international law," it being earnestly contended that a neutral might properly trade, blockade and contraband excepted, to and between all enemy ports and in all manner of merchandise. Thus the essential reason of the rule found opposition in the United States, and its far

reaching extension in prize decisions called forth from Story a clear statement of the points at issue:

My own private opinion certainly is that the coasting trade of a nation, in its strict character, is so exclusively a national trade, that Neutrals can never be permitted to engage in it during war, without being affected with the penalty of confiscation. The British have unjustly extended the doctrine to cases, when a Neutral has traded between ports of the enemy, with a cargo taken in at a neutral country. I am as clearly satisfied that the colonial trade between the mother country and the colony, where that trade is thrown open merely in war, is liable in most instances to the same penalty. But the British have extended this doctrine to all intercourse with the colony, even from or to a neutral country, and herein it seems to me they have abused the rule. This at present appears to me to be the proper limits of the rule, as to the colonial and coasting trade; and the Rule of 1756 (as it was at that time applied), seems to me well founded; but its late extension is reprehensible.⁴

Already during the conflict of the American Revolution, in 1780, as also twenty years later, a strong effort was made to shelter neutral carrying ships behind the bulwark of a powerful league whose principles should be expressed, as was its determination to enforce them, in terms clear to the world at large. These aims were vindicated, though for brief periods only, by the celebrated Armed Neutralities of 1780 and 1800. The league of 1780 originated with the Empress Catherine of Russia and finally comprised France, Spain, Holland, Denmark, Sweden, Prussia, the Germanic Empire, Portugal and the Two Sicilies; the treaty uniting them bears date July 7, 1780 and provides:

- (1) That neutral ships may freely trade from port to port, and upon coasts of nations at war.
- (2) That the property of the subjects of belligerent Powers shall be free on board of neutral ships, excepting goods that were contraband.
- (3) That with regard to contraband goods the Empress binds herself by what was contraband in the Arts. X and XI of her treaty with Great Britain, extending these obligations to belligerent Powers.
- (4) That to determine what characterizes a blockaded port, this term shall be confined to places where there is an evident danger in entering, from the arrangements of the Power which is attacking with vessels stationary and sufficiently close.
- (5) That these principles shall serve for a rule in the proceedings and judgments on the legality of prizes.

In 1800 a second and similar league announced kindred principles, with the addition now of immunity from search where a neutral merchantman is convoyed by an armed cruiser of its own nationality:

1. Any neutral vessel may freely sail from port to port and along the coasts of nations at war.

⁴ Phillimore, *Comm. on International Law*, Vol. 3, p. 311, 1st ed. 1857. See on the "Rule of War of 1756" appendix to 1 Wheaton U. S. Reports, reprinted in the Appendix to this article, p. 413 *infra*.

2. That the merchandise belonging to the subjects of Powers at war shall be held free on neutral ships, except contraband of war.

3. That in order to determine just what constituted a blockade of a port, it is agreed that a blockade is only valid when maintained by cruisers of the war strength proportioned to the strength of the place besieged and which cruisers thereof stand sufficiently near to render an attempt to enter dangerous.

4. Neutral vessels may only be stopped for just cause; questions at issue shall be tried without delay; legal procedure in such cases shall be uniform, prompt and in accordance with law and, where the vessel is found to be without fault, complete satisfaction shall be accorded for any insult offered to its flag. When one or more vessels are under convoy by a warship, a declaration of said warship's commanding officer that the ships convoyed by him have on board no contraband shall suffice to dispense with visit or search of the ships under such convoy.

During the years immediately following 1793, the Convention, and, in succession, the Directory and Consulate issued a series of decrees growing more severe and dealing chiefly with questions of enemy goods carried on neutral ships and cognate matters. Specially reprehensible in the view of Revolutionary France was the Anglo-American (Jay) Convention of November 19, 1794. Mr. Jay's mission to England had been concerned, among other things, with the contraband and colonial trade as carried by American vessels. The colonial and all coasting traffic were at this period national monopolies comprising trade both to and from colonial ports, dealings in colonial products, and the furnishing of colonials with articles of commerce in general. The colonies were regarded throughout Europe as commercial property to be exploited for the parent country's exclusive benefit, such exploitation to be strictly confined, moreover, to carriage by the national parent's shipping. Hence the practical exclusion of all foreign navigation from colonial waterways was aimed at in the rule of 1756. Of allied import was the later development of the theory of continuous voyage destined to a momentous rôle in maritime jurisprudence. Despite, however, the original strictness of this colonial monopoly, British prize courts and executive rulings greatly relaxed the tension, so that while, in November, 1793, English cruisers were, by order in council, directed to seize ships carrying on French colonial trade, yet this order was modified on January 8, 1794, to apply only to direct colonial trade with Europe, thus leaving a free hand to trade between West Indian colonies and the United States. A further order of January, 1798, allowed neutrals to carry French and Dutch colonial goods to England directly but not to France or Holland.

On November 18, 1794, the Committee of Public Safety at Paris announced the confiscation of enemy goods on neutral ships as a rule of action valid until the enemies of the Republic should adopt the milder principle of free ships, free goods. Later, this was modified (decree of January 3, 1795; decree of July 2, 1796), although on March 2, 1797⁵ the oppressive requirement for

⁵ See decree printed in Appendix, paragraph 4, page 415.

neutrals of crew lists, etc. (*rôles d'équipage*) if confiscation was to be avoided, paved the way to a decree on January 18, 1798, putting in force a harsh rule dating from Francis the First that the carriage of *enemy* property by a *neutral* ship works confiscation not merely of the property but of the ship as well — *robe d'ennemi confisque robe d'ami*. Following is the decree of 1798:

Law which determines the character of vessels from their cargo, especially those loaded with English merchandise.

29th Nivose, 6th year (18th January, 1798)

After having heard the report of a special commission on the message of the Executive Directory of the 15th Nivose, relative to English merchandise, considering that the interest of the Republic requires the most prompt measures against all vessels which shall be loaded with it:

Art. 1. The character of vessels in what concerns their quality as neutral or enemy, shall be decided by their cargoes; in consequence every vessel found at sea laden in whole or in part with merchandise coming (*provenant*) from England or her possessions, shall be declared good prize, whoever may be the proprietors of these productions or merchandise.

Art. 2. Every foreign vessel which shall, during her voyage, have entered a port of England, shall not be admitted into a port of the French Republic, save only when there is a necessity for her entering (*de relâche*, i.e., in distress) in which case she shall be bound to leave said port so soon as the cause of her entering it (*de sa relâche*) shall have ceased.

The severity of these decrees, nevertheless, was soon lessened as milder counsels prevailed at Paris, while English orders in council of January 8, 1794, and January 25, 1798, finally allowed not merely neutral trade directly between an English West Indian colony and points in the United States, but from a French, Spanish or Dutch colony "to any port in Europe being a port of this Kingdom or a port of that country to which such ships, being neutral ships, shall belong." Thus the rule of 1756 became less rigorous as a basis of capture, while the assertion by the United States of its undoubted rights in the anomalous naval war with France during the years 1798-1801 prevented the wholesale suppression of American commerce aimed at in the decrees we have noticed. It is, however, to be carefully remarked that these decrees in both spirit and letter constituted the starting point for more celebrated announcements by Napoleon, together with the British orders in council of 1806, 1807 and 1809, and which we must next consider.

(To be concluded in the next number.)

APPENDIX

(1) The considerations affecting liability to capture of private property upon the open ocean or in belligerent territorial waters have been clearly outlined by Alison in his *History of Europe*, Vol. 2, Chap. XXXIII:

There arises, from the very nature of the elements on which they are respectively exercised, an essential difference between the laws of war at sea and at land. Territorial conquests are attended by immediate and important advantages to the victorious power; it gains possession of a fruitful country, of opulent cities, of spacious harbours, and costly fortresses; it steps at once into the authority of the ruling government over the subject state, and all its resources, in money, provisions, men, and implements of war, are at its command. But the victor at sea finds himself in a very different situation. The most decisive seafights draw after them no acquisition of inhabitants, wealth, or resources; the ocean is unproductive alike of taxes or tribute, and among the solitary recesses of the deep you will search in vain for the populous cities or fertile fields which reward the valour of terrestrial ambition. The more a power extends itself at land, the more formidable does it become, because it unites to its own the forces of the vanquished state; the more it extends itself at sea, the more is it weakened, because the surface which it must protect is augmented, without any proportional addition to the means by which its empire is to be maintained.

In the infancy of mankind the usages of war are the same on both elements. Alike at sea as on shore, the persons and property of the vanquished are at the disposal of the conquerors; and from the sack of cities and the sale of captives, the vast sums are obtained which constitute the object and the reward of such inhuman hostility. The liberty for which the Greeks and Romans contended was not mere national independence or civil privileges, but liberation from domestic or predial servitude, from the degradation of helots or the lash of patricians. Such is to this day the custom in all the uncivilized portions of the globe, in Asia, Africa, and among the savages of America, and such, till comparatively recent times, was the practice even among the Christian monarchies and chivalrous nobility of modern Europe. But with the growth of opulence and the extension of more humane ideas, these rigid usages have been universally softened among the European nations. As agriculture and commerce improved, it was found to be as impossible as it was inhuman to carry off all the property of the vanquished people, the growth, perhaps, of centuries of industry. The revenue and public possessions of the state furnished an ample fund to reward the conquering power, while the regular pay and fixed maintenance at the public expense of the soldiers took away the pretext for private pillage as a measure of necessity. All nations, subject in their turn to the vicissitudes of fortune, found it for their interest to adopt this lenient system, which so materially diminished the horrors of war; and hence the practice became general, excepting in the storming of towns and other extreme cases, where the vehemence of passions bid defiance to the restraints of discipline, to respect private property in the course of hostilities, and look for a remuneration only to the public revenue or property of the state. It is the disgrace of the leaders of the French

Revolution, amid all their declamation in favour of humanity, to have departed from these beneficent usages, and, under the specious names of contributions, and of making war support war, to have restored at the opening of the 19th the rapacious oppression of the 9th century.

Humanity would have just reason to rejoice if it were practicable to establish a similar system of restrained hostility at sea; if the principle of confining the right of capture to public property could be introduced on the one element as well as the other, and the private merchants were in safety to navigate the deep amid hostile fleets, in the same manner as the carrier on land securely traverses opposing armies. But it has never been found practicable to introduce such a limitation, nor has it ever been attempted, even by the most civilized nations, as a restraint upon their own hostilities, however loudly they may sometimes have demanded it as a bridle upon those of their enemies. And when the utter sterility of the ocean, except as forming a highway for the intercourse of mankind, is considered, it does not appear probable that, until the human heart is essentially changed, such an alteration, how desirable soever by the weaker states, ever will be adopted.

(2) Alison (*History of Europe*, Chap. XXXIII) has sketched a useful outline of principles applicable in sea warfare:

But it is not merely with the subjects of nations in a state of hostility that belligerents are brought in contact during modern warfare; they find themselves continually in collision also with Neutral Vessels trading with their enemies, and endeavouring, from the prospect of high profits, to furnish them with those articles which they are prevented from receiving directly from the trade of their own subjects. Here new and important interests arise, and some limitation of the rigour of maritime usage evidently becomes indispensable. If the superior power at sea can at pleasure declare any enemy's territory in a state of blockade, and make prize of all neutral vessels navigating to any of its harbours, it will not only speedily find itself involved in hostilities with all maritime states, but engaged in a species of warfare from which itself, at some future period, may derive essential injury. On the other hand, it is equally impossible to maintain that the vessels of other states are to be entirely exempted from restraint in such cases, or that a belligerent power, whose warlike operations are dependent, perhaps, upon intercepting the supplies in progress towards its antagonist, is patiently to see all its enterprises defeated merely because they are conveyed under the cover of a neutral flag instead of its enemy's bottoms. Such a pretension would render maritime success of no avail, and wars interminable, by enabling the weaker power, under fictitious cover, securely to repair all its losses. These considerations are so obvious, and are brought so frequently into collision in maritime warfare, that they early introduced a system of international law, which for centuries has been recognised in all the states of Europe, and is summed up in the following propositions by the greatest masters of that important branch of jurisprudence that ever appeared in this or any other country.

1. That it is not lawful for neutral nations to carry on, in time of war, for the advantage or on behalf of one of the belligerent powers, those branches of their commerce from which they are excluded in time of peace.

2. That every belligerent power may capture the property of its enemies wherever it shall meet with it in the high seas, and may for that purpose detain and bring into port neutral vessels laden wholly or in part with any such property.

3. That under the description of contraband of war, which neutrals are prohibited from carrying to the belligerent powers, the law of nations, if not restrained by special treaty, includes all naval as well as military stores, and generally all articles serving principally to afford to one belligerent power the instrument and means of annoyance to be used against the other.

4. That it is lawful for naval powers, when engaged in war, to blockade the ports of their enemies by cruising squadrons *bona fide* allotted to that service, and duly competent to its execution. That such blockade is valid and legitimate, although there be no design to attack or reduce by force the port, fort, or arsenal to which it is applied; and that the fact of the blockade, with due notice given thereof to neutral powers, shall affect not only vessels actually intercepted in the attempt to enter the blockaded port, but those also which shall be elsewhere met with, and shall be found to have been destined to such port, under the circumstances of the fact and notice of the blockade.

5. That the right of visiting and searching neutral vessels is a necessary consequence of these principles; and that, by the law of nations (when unrestrained by particular treaty), this right is not in any manner affected by the presence of a neutral ship of war, having under its convoy merchant ships, either of its own nation or of any other country.

In these propositions are contained the general principles of the maritime code of the whole European nations, as it has been exercised by all states towards each other, and laid down by all authorities on the subject from the dawn of civilization. The special application of these principles to the question immediately at issue between the contending Powers in 1801 is contained in the following propositions, laid down as incontestable law by that great master of maritime and international law, Sir William Scott:

1. "That the right of visiting and searching merchant ships upon the high seas, whatever be the ships, whatever be the cargoes, whatever be the destinations, is an incontestable right of the lawfully commissioned cruisers of a belligerent nation.

2. "That the authority of the sovereign of the neutral country being interposed in any matter of mere force cannot legally vary the rights of a legally commissioned belligerent cruiser, or deprive him of his rights to search at common law.

3. "That the penalty for the violent contravention of this right is the confiscation of the property so withheld from visitation and search.

4. "That nothing farther is necessary to constitute blockade than that there should be a force stationed to prevent communication, and a due notice or prohibition given to the party.

5. "That articles tending probably to aid the hostilities of one of the belligerents, as arms, ammunition, stores, and, in some cases, provisions, are contraband of war, and, as such, liable to seizure by the vessels of the other party, with the vessel in which they are conveyed."

(3) 1 WHEATON U. S. REPORTS. APPENDIX PAGES 528-529. RULE OF WAR OF 1756

This celebrated doctrine or "rule" was destined to constitute a leading source of dispute between England and France and the United States.

In the case of *The Speculation* (December 16th, 1799, 2 Rob. 293) the king's advocate (Sir John Nicholl) stated, "That the ship appeared to have been carrying on the coasting trade of France; a trade not only generally forbidden, but expressly prohibited to neutral ships, by the ordinances of France, which have issued during this war, that she would, therefore, come under the character of an adopted French ship." Whilst on the other hand, the claimant's counsel (Dr. Laurence) answered, that "it has not been held in the present war, that the mere circumstances of being engaged in the coasting trade of the enemy, does amount to that adoption, which will subject the property to condemnation." Sir William Scott, in his judgment says, "This is a case of a ship taken on a voyage from one French port to another, which is certainly a sufficient justification of the capture; because the very circumstance of being engaged in conducting the trade of the enemy, from one port to another, will justly subject the vessel to inquiry; and perhaps, in some future case, the court may have occasion to consider, how far the regulations that have been alluded to, and the acting upon them (which it may be proper to consider at the same time), may not make such a trade liable to be considered as a case of adoption."

We may therefore, considered it as proved, that the rule was suffered to slumber from the beginning of the war of the American revolution, until it was awakened, with increased activity, by the orders in council of the 6th November 1793, instructing the public and private ships of war of Great Britain, to "stop and detain all vessels laden with goods, the produce of any colony belonging to France, or carrying provisions, or other supplies, for the use of any such colony, and to bring the same, with their cargoes, to legal adjudication in our courts of admiralty."

Although some confusion and contradiction exists in the language of the British prize courts, whether instructions of this nature are binding on the tribunals of the nation by whom they are issued, as a positive law, or merely as declaratory of the pre-existing law of nations, Sir William Scott appearing, at one time, to regard the text of the king's instructions, as binding on his judicial conscience, and at another, holding it indecorous to anticipate the possibility of their conflicting with the law of nations, whilst Sir James Mackintosh declared, that, if he saw in such instructions, any attempt to extend the law, to the prejudice of neutrals, he should not obey them, but regulate his decisions by the known and recognized law of nations; (a) yet, the instructions of 1793 might properly be considered as evidence of what the British government deemed to be law, if this inference were not somewhat weakened by the circumstances that they were secretly issued, precipitately repealed, and full indemnification was made, for the captures under them. On the 8th January 1794, the following instruction was substituted: "That they shall bring in for lawful adjudication, all vessels, with their cargoes, that are loaded with goods, the produce of the French West India islands, and coming directly from any port of the said islands, to any port in Europe."

And on the 25th of January 1798, this order was also revoked, and the following was issued: "That they should bring in, for lawful adjudication, all vessels, with their cargoes, that are laden with goods, the produce of any island or settlement, belonging to France, Spain, or the United Provinces, and coming directly from any port of the said islands or settlements, to any port in Europe not being a port of this kingdom, nor a port of that country to which such ships, being neutral ships, shall belong."

We have seen, that, up to the time when this last order was issued, the prize courts had never, of their own authority, revived the rule which they had invented in the war of 1756, and laid aside in that of the American revolution. But when it was once more called into life, by the instructions of the executive government, they gradually enlarged the sphere of its activity beyond the text of those instructions, either upon the principle of affecting the return-voyage, with the penalty of contraband, contrary to Sir William Scott's own previous opinions, (b) or, upon the principle of a continuity of the voyage, which had been repudiated by the Lords of Appeal, in the war of 1756, even where the colonial produce was transhipped in a neutral port, from barks, in which it was brought from enemy's ports, and not from the shore. Upon one or the other of these assumptions, the rule was applied to cut off the exportation of the produce of the enemy's colonies from neutral countries, where it had been imported, unless it had become incorporated into the general stock of national commodities (c) according to the fluctuating rules prescribed to break the continuity of voyage. On the renewal of the war, after the peace of Amiens, the following order was issued, dated on the 24th of June 1803: "In consideration of the present state of commerce, we are pleased hereby to direct the commanders of our ships of war and privateers, not to seize any neutral vessel which shall be carrying on trade, directly between the colonies of the enemy, and the neutral country to which the vessel belongs, and laden with the property of the inhabitants of such neutral country; provided, that such neutral vessel shall not be supplying, nor shall, on the outward voyage, have supplied the enemy with any articles contraband of war, and shall not be trading with any blockaded port." This instruction is substantially the same with that of 1798, except that it adopts the innovation of the prize courts, affecting the return-voyage with the penalty of contraband carried outward. Under it, the same course of decisions took place, by which the noxious qualities of the rule were much enlarged, and its wide-spreading desolation threatened to interrupt the amicable relations between the United States and Great Britain: when the order in council, of the 16th of May 1806, was issued, blockading the coasts from the river Elbe to Brest, inclusive, except that neutral vessels, coming directly from the ports of their own country, were allowed to enter and depart from the blockaded ports, with cargoes, not enemy's property, nor contraband, but were not permitted to trade from port to port. This order was supposed to have been drawn up with a view to the colonial trade; but it does not appear to have been considered by the prize courts, as containing any relaxation of the principles they had established respecting that trade, and the whole question was at length merged in the orders in council of the 7th of January, and the 11th of November 1807; by the first of which, all neutral trade, from one enemy's port, or from a port where the British flag was excluded, to another such port,

and by the latter (among other provisions) the exportation of the produce of the enemy's colonies, from a neutral country, to any other country than Great Britain, was prohibited. These orders were issued in retaliation of the Berlin decree of the French emperor, and on the 26th of April 1809, they were relaxed, as to the European blockade, but extended to the total prohibition of all neutral trade with the colonies of France and Holland.

Closely affiliated with these doctrines was the celebrated principle of "continuous voyage" to be considered later and which at the beginning of the nineteenth century had become a source, as applied in Prize decisions arising through cases concerned with European colonial commerce, of exceedingly bitter dispute. A lapse of more than a century enables the student of international law to take a calmer view of this somewhat complex subject; we cannot, however, greatly commend the argument championed by the United States that the bringing of West Indian merchandise to a New England port, unloading it for the purpose of paying practically a fictitious custom duty, and re-shipping it for France on the same vessel, did not in truth exhibit a single commercial journey or continuous voyage from a West Indian colonial port to a port of the mother country, then an enemy of Great Britain, whose cruisers seized the merchandise as confiscable under the Rule of 1756.

The English instruction of November 6th, 1793, ordered naval officers to "stay and detain all ships laden with goods the produce of any colony belonging to France, or carrying provisions or other supplies for use of any such colony, and" to "bring the same, with their cargoes, to legal adjudication in our courts of admiralty," thus enforcing the "Rule." "This instruction was modified January 8th, 1794, in such a way as to leave open the trade between the United States and unblockaded ports in the West Indies, in articles not contraband and not of French ownership. The goods thus introduced into the United States might then be shipped to unblockaded ports in France." (American Diplomacy, by Professor Carl Russell Fish, New York, 1915, page 112.)

- (4) DECREE OF THE EXECUTIVE DIRECTORY CONCERNING THE NAVIGATION OF NEUTRAL VESSELS, LOADED WITH MERCHANDISE BELONGING TO THE ENEMIES OF THE REPUBLIC, AND THE JUDGMENTS ON THE TRIALS RELATIVE TO THE VALIDITY OF MARITIME PRIZES. 12TH VENTOSE, 5TH YEAR (MARCH 2, 1797).

The Executive Directory, having examined the law of the 9th May, 1793, which forasmuch as the flag of neutral Powers not being respected by the enemies of the French Republic, and all the laws of nations being violated to her prejudice, it is no longer permitted to the French people to fulfil towards these Powers, in general, the wish which it has so often manifested, and

which it will constantly form, for the full and entire liberty of commerce and of navigation, orders, among other things.

1. That the French vessels of war and privateers may stop and carry into the ports of the Republic neutral vessels which may be found, loaded entirely or in part with merchandise belonging to the enemy.

2. That the merchandise belonging to the enemy shall be declared good prize, and confiscated for the benefit of the captors.

3. That, in all cases, the neutral vessels shall be released the moment the unloading of the merchandise seized shall have been effected; that the freight shall be paid at the rates which shall have been stipulated by the freighters, and a just indemnity shall be allowed for their detention by the tribunals whose duty may be to take cognizance of the validity of the prizes.

4. That these tribunals shall moreover be bound to transmit, three days after their judgment, a copy of the inventory of the merchandise to the Minister of Marine, and another copy to the Minister of Foreign Affairs.

5. That the present law, applicable to all prizes which have been made since the declaration of war, shall cease to have its effect when the enemy Powers shall have declared free and not seizable, though destined for the ports of the Republic, the merchandise loaded on board neutral vessels, which shall belong to the French Government or its citizens.

Having likewise examined the law of the 27th July, 1793, which in maintaining that of the 9th May preceding, hereabove recited, orders that it should have its full and entire execution, and that, in consequence, all other regulations which may be contrary to it are and remain repealed; a repeal which evidently comprehends the law of the 1st of the same month of July, by which the vessels of the United States of America had been excepted from the law of the 9th May, in conformity to the fifteenth article of the treaty of the 6th February, 1778.

Having also examined the seventh article of the law of the 13th Nivose, 3d year (3d January, 1795), which enjoins on all the agents of the Republic, on all the commandants of the armed force, on the officers, civil and military, to cause to be respected and observed, in all their arrangements, the treaties which unite France to the neutral Powers of the ancient continent and to the United States of America; and adds that no blow shall be aimed at those treaties, and that all regulations which may be contrary to them are annulled; considering that this last law does not derogate from that of the 9th May, 1793, save only in favor of those neutral Powers whose treaties actually subsisting with the French Republic are contrary to its regulations; that, consequently, it is important for the information, as well as of the commandants of the armed force of the Republic, and of the vessels commissioned by it, as of the tribunals charged with deciding on the validity of the prizes, to take measures for preventing either that it should be supposed that treaties existed which never were made, or that treaties concluded for a limited time which is expired, should be considered as still being in force, or that those

which have been modified since their formation should be considered as yet requiring a literal execution; that to this last description belongs particularly the treaty of amity and commerce concluded the 6th February, 1778, between France and the United States of America, that, in effect, by the second article of this treaty, France and the United States of America mutually engage not to grant any particular favor to other nations, in relation to commerce and navigation, which does not become forthwith common to the other party; and that it is added by the same article, that this other party shall enjoy the favor gratuitously, if the grant is gratuitous, or on making the same compensation if the grant is conditional; that thus the provisions stipulated in favor of England by the treaty of amity, commerce, and navigation, concluded at London, the 19th November, 1794, between that Power and the United States of America, are considered to have been in behalf of the French Republic itself, and, in consequence, modifying, in the points where they differed, the treaty concluded 6th February, 1778; that it is agreeably to these provisions that the French Government has declared, by its decrees of the 14th and 28th Messidor, 4th year (2d and 16th July, 1796), as it is likewise forced to do at present, that it will use the just measures of reciprocation which it had a right to exercise in that respect, in every thing which has a relation to the circumstances of the war, as also to the political, commercial, and maritime interests of the French Republic; that, consequently, it is necessary to settle, by reconciling the treaties of the 6th February, 1778, and 19th November, 1794, every doubt as to the case where this right of reciprocation ought to be exercised:

Considering that there have been quite lately raised, as to the manner of stating the proofs of property in the ships and merchandise pretended to belong to neutrals, doubts and controversies which never would have taken place if the provisions of the ancient regulations relative to this business had been better known; that it consequently is of importance to recite these provisions, and to cause to be executed the fifth article of the law of the 14th February, 1793, which has maintained them:

After having heard the Ministers of Justice, of Marine, and of the Colonies, decrees what follows:

Art. 1. The Commissioners of the Executive Directory, near the civil tribunals of the Departments, shall take care that, on the trials as to the validity of maritime prizes, no judgment shall be founded on the seventh article of the law of the 13th Nivose, 3d year (2d January, 1795), unless the Minister of Justice be previously consulted, in conformity to the third article of the law of the 8th Floreal, 4th year (27th April, 1796), relative to the treaties in virtue of which some neutrals might pretend to withdraw themselves, by means of the first of these laws, from the execution of that of the 9th May, 1793.

Art. 2. The Minister of Justice will consequently examine if the treaties appealed to still remain in force, or whether they have been modified since

their adoption. He shall be furnished, for this purpose, by the Minister of Exterior Relations, with all the information (*renseignements*) of which he shall be in want, and he shall refer the same to the Executive Directory, as is prescribed by the law of the 8th Floreal, 4th year (27th April, 1796).

Art. 3. The Executive Directory reminds all French citizens that the treaty entered into on the 6th February, 1778, between France and the United States of America, has been, from the terms of the second article, in strict right (*de plein droit*) modified by that which was entered into in London on the 19th November, 1794, between the United States of America and England. In consequence, agreeably to the seventeenth article of the treaty of London of the 19th November, 1794, all merchandise belonging to an enemy, or not sufficiently proven to be neutral, loaded under the American flag, shall be confiscated; but the vessel on board of which it shall have been found shall be released and returned to the proprietor. It is enjoined on the Commissioners of the Executive Directory to cause to be accelerated by all the means in their power, the judgment on the trials which shall take place, either in relation to the validity of the capture of the cargo, or in relation to freights and demurrage (*surestaries*).

Agreeably to the eighteenth article of the treaty of London of the 19th November, 1794, there shall be added the following articles to those declared contraband by the twenty-fourth article of the treaty of the 6th February, 1778, viz.: wood for ship building, pitch, tar, and rosin, copper in sheets, canvas, hemp, and cordage, and everything that serves, directly or indirectly, for the armament and equipment of vessels, except unwrought iron and fir-plank. These several articles shall be confiscated whenever they shall be destined or when it is attempted to carry them, to the enemy.

Agreeably to the twenty-first article of the treaty of London of the 19th November, 1794, every individual known to be American, who holds a commission given by the enemies of France, as also every mariner of that nation making a part of the crew of private or public ships (*navires ou vaisseaux*) of the enemy, shall be, from that act alone, declared a pirate, and treated as such, without allowing him, in any case, to show that he had been forced by violence, menaces, or otherwise.

Art. 4. In conformity to the law of the 14th February, 1793, the regulations of the 21st October, 1744, and of the 26th July, 1778, as to the manner of proving the right of property in neutral ships and merchandise, shall be executed, according to their form and tenor.

In consequence, every American vessel shall be good prize which has not on board a list of the crew (*rôle d'équipage*), in proper form, such as is prescribed by the model annexed to the treaty of the 6th February, 1778; a compliance with which is ordered by the twenty-fifth and twenty-seventh articles of the same treaty.

Art. 5. It is enjoined on the Commissioners of the Executive Directory to call the severity of the tribunals to the fraudulent manoeuvres of every

ship-owner calling himself a neutral American, or other, on board a vessel in which shall be found, as has frequently been done during the present war, either maritime papers (*papiers de mer*) in blank, though signed and sealed, or papers, in form of letters, containing the signatures of individuals in blank; or of double passports or sea-letters, which indicate different destinations to the vessel; or double invoices, bills of lading, or any other ship papers, which assign to the whole or to a part of the same merchandise different proprietors or different destinations.

Art. 6. From the regulations of the present decree, that of the 9th Frimaire last (29th November, 1795), concerning the freights and demurrage, is referred to what relates to the demurrage only.

The present decree shall be inserted in the bulletin of the laws. The Ministers of Marine and of the Colonies, of Justice, and of Foreign Relations, are charged with its execution, each one in what concerns him.

EDITORIAL COMMENT

THE DECISION IN CALIFORNIA RELATING TO THE HOLDING OF LAND BY JAPANESE

In 1920 the State of California passed the so-called Alien Land Law, of which the first and second sections follow:

Section 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States except as otherwise provided by the laws of this state.

Section 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.¹

Although this law has been on the statute book but a short time, it has been the source of much litigation. It is maintained by aliens residing in California, and indeed on the Pacific Coast, that the provisions of the law discriminate unjustly between alien residents, and that they are in conflict with the Treaty of 1911 between the United States and Japan. Suits have been brought against the Attorney General of California, and the District Attorneys of San Francisco and of Los Angeles, to enjoin those officials from enforcing the provisions of the Alien Land Law. One of the most recent is that of Frick and Satow vs. U. S. Webb, Attorney General of California and Matthew Brady, District Attorney of San Francisco, in which the plaintiffs filed their complaint in the District Court of the United States, Northern District of California, Southern Division, in order to secure a temporary injunction against the defendants. As the District Court was of the opinion that it required for its decision the presence of three judges, one of whom should be a Circuit Judge of the United States, it was heard before two District Judges and the Hon. William W. Morrow, Circuit Judge.

The case arose under the second section of the act, and the material questions are thus stated by Judge Morrow:

It is alleged in the complaint that Satow is a subject of the Emperor of Japan, born in the Empire of Japan, of Japanese parents, and is also a resident of California. Satow is an alien, and he is ineligible to citizenship under the laws of the United States. He is therefore one of the

¹ Statutes of California, 1921, p. lxxxiii.

aliens who may not acquire, possess, enjoy, and transfer real property or any interest therein, in this state, unless it is so provided in the treaty between this country and Japan. Our attention has not been called to any provision in the treaty between this country and Japan providing that such an alien may acquire, possess, enjoy, and transfer real property or any interest therein in this state, other than to lease land for residential or commercial purposes.

The rights which the Japanese have under the treaty to which Judge Morrow refers are contained in Article 1 thereof:

The citizens or subjects of each of the High Contracting Parties shall have liberty to enter, travel and reside in the territories of the other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established.²

The question before the court then was, as stated by Judge Morrow:

Is the ownership of 28 shares of the capital stock of the Merced Farm Company, a corporation organized under the laws of the State of California for agricultural purposes, such an interest in real property as to bring him within the prohibitory provisions of this act?

It is alleged that the Merced Farm Company is a California corporation authorized to acquire, possess, enjoy and convey agricultural land; that the Company is, in fact, the owner of approximately 2200 acres of agricultural land situated in Merced County, and that the land "thus owned is not for leasing, for residential, or for commercial purposes". On this state of the law and of the facts Judge Morrow said:

We think the ownership of stock in such a corporation would be an interest in real property which would bring the alien owner of such stock (who is ineligible to citizenship) within the prohibitory provisions of the act, and that under section 2 of the act the Attorney General is authorized by sections 7 and 8 of the act to institute proceedings to have the escheat of such interest in real property in the manner provided by section 474 of the Code of Civil Procedure of this state, and that such proceedings would not be in violation of the treaty between the United States and Japan or the Fourteenth Amendment of the Constitution of the United States.

This was the unanimous opinion of the court. Sawtelle, District Judge, delivered an opinion in which Judge Morrow, Circuit Judge, and District Judge Dooling concurred. It is very short and to the point, and has the advantage of citing the authorities upon which the court reached its conclusions. Its material portion follows:

² Charles, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States and other Powers, 1910-1913*, Vol. 3, p. 77.

It is the unanimous opinion of this court that the plaintiffs herein are not entitled to injunctive relief and that their application for a temporary injunction should be denied; that the California Statute here involved violates no provision of the Constitution of the United States, nor does it conflict with any provision or stipulation of the Treaty between Japan and the United States.

We are entirely satisfied with the decision of the court in the recent cases of *Terrance vs. Thompson*, 274 Fed. 841; *Porterfield and Mizuno vs. Webb*, Attorney General, et al., 279 Fed. 114, and *O'Brien and Moye vs. Webb*, Attorney General, et al., 279 Fed. 117, and believe the opinion in each of those cases is sound law and correctly interprets those provisions of the constitution and treaty here involved.

In *Terrance vs. Thompson*, 274 Fed. 841 (1921), the nature of the treaty between the United States and Japan, and the extent to which it conferred rights upon Japanese subjects residing within the United States, are considered in detail. In this case the plaintiffs, *Terrance, et al.*, were the owners of certain land in the State of Washington, who wished to lease their lands to *Nakatsuka*, a subject of Japan, who desired a lease of the lands. It is stated that the Japanese in question was engaged in farming, wholesale and retail trading in foreign products, and that the leasing of the land in question would be prevented by the enforcement by *Thompson*, the Attorney General of the State of Washington, of Chapter 50, Laws of Washington, 1921, commonly known as the Alien Land Bill. The United States District Court of the State of Washington held that the treaty with Japan did not grant the right to lease property for agricultural purposes; that the law of the State did not conflict with the provisions of the treaty, and that, therefore, the Attorney General of the State should not be enjoined from enforcing the provisions of the state law.

The act in question prohibited the purchase or lease of lands by an alien who had not declared his intention to become a citizen. Inasmuch as it is held that a Japanese may not become a citizen of the United States, it necessarily follows that he could not legally declare his intention to assume a status which he could not acquire.

In *Porterfield and Mizuno vs. Webb*, Attorney General, et al., 279 Fed. 114 (1921), it appeared that *Porterfield* owned 80 acres of land peculiarly adapted to raising vegetables; that he desired to lease the land in question to *Mizuno*, a subject of the Emperor of Japan, but that he was prevented from so doing because of the California Alien Land Law. For the reason stated in the *Terrance* case, which was cited with approval, *Dooling*, District Judge, denied the motion for preliminary injunction against the Attorney General.

In *O'Brien and Moye vs. Webb*, Attorney General, et al., 279 Fed. 117 (1921), it appeared that one *O'Brien* wished to employ one *Inouye*, a Japanese subject, lawfully residing in the State of California, to take possession of the land in question for a period of four years "for the purpose of planting, cultivating, and harvesting crops to be grown on owner's land." The owner

was to provide and maintain housing accommodations, to furnish necessary implements, etc., for the proper farming of the land, but it was specifically stated that the employe, technically called a cropper, should have "no interest or estate whatsoever in the land described herein." Dooling, District Judge, before whom the petition for injunction was heard, held that the contract was not one of lease, as it passed no interest in land. Numerous cases to this effect were cited, notably the case of *Caswell vs. Districh*, 15 Wend. (N. Y.) 379, which "seems to run through the books as a leading one", in which it was stated that:

Where a farm is let for a year upon shares, the landlord looks to his interest in the crops as his security, and thereby is enabled to accommodate tenants who otherwise would not be trusted for the rent.

The learned Judge quoted the opinions of text-books to the same effect. The motion for the injunction was, therefore, granted.

These cases seem to express the views held by federal courts on the Pacific Coast as to the rights acquired under the Treaty with Japan, and as to the rights which the States can exercise without violating the provisions of that treaty. Inasmuch as the questions involved in these cases may ultimately be passed upon by the Supreme Court, it seems at present advisable only to call attention to the question without indulging in further comment or criticism.

JAMES BROWN SCOTT.

PRACTICAL CODIFICATION OF INTERNATIONAL LAW

"The lack of precision," says Oppenheim, "which is natural to the majority of the rules of the Law of Nations on account of its slow and gradual growth has created a movement for its codification."

But what is meant by the term codification! Its Dictionary definition as applied to the laws of an individual country is "the reducing of its unwritten or case law to statutory form." This in the matter of international law is impossible, because no authority is empowered to enact statutes to cover it. What then in international law is the equivalent of statutory enactment? Clearly it is the general acceptance by States under treaty. Such a process consists of two parts; the scientific determination of the law as it is and should be, and the public universal acceptance of that law as it shall be, as something by which each State consents to be bound. The first process is academic, scholarly; the second process is political.

Take, as an illustration, the processes by which the Geneva Convention came into existence. First appeared the impassioned propaganda of M. Dunant describing the unnecessary suffering of the battlefield in *Un Souvenir de Solferino*, and pleading for extra-military aid to the wounded. Then came a private conference at Geneva, called by a local society, which studied the whole subject and argued for the neutralization of extra-military agencies

in war. But the movement was useless without governmental sanction, for it was based upon a suggested violation of neutrality and of the laws of war. To make its suggestions operative, a third step was necessary, the acceptance in treaty form, by duly appointed delegates from the principal Powers, of the principles laid down by the humanitarians and the scholars. Out of this sprang the Red Cross system. It was the codification of a minute portion of the laws of war.

Take another example. The laws of war on land were tolerably uniform in most particulars at the outbreak of our Civil War. To govern the Northern armies in the field, Professor Lieber was employed to draw up in codified form a set of rules adopted by the War Department. It was binding upon no other country or army. But it served as a precedent and example to be worked over by the two Brussels conferences, by the Oxford meeting of the Institute of International Law, by countless publicists, alone or in groups, until in process of time, at The Hague in 1899 and 1907, rules to regulate war on land were adopted in treaty form by the principal Powers. This was genuine codification covering an important part of international law. The sharp distinction which is emphasized, is between the labors of a hundred publicists, on the one hand, and the official action of forty-five States on the other. Academic studies by individuals and by societies are a preliminary, but they cannot make a rule that is binding. Each State must do that for itself.

It is not too much to say that this real codification has thus made some progress. But it is noteworthy that its progress has been in a highly contentious field. The London Conference of 1909 covering naval warfare failed because the strongest naval Power would not ratify its innovations.

Why has the international world attacked the hardest problems first? Why has it put the capstone of the arch at the base? May not the reason be that it has never attempted the codification of its laws as a definite and separate problem; that it has rather tried to protect itself from threatened evils in war, without thought of the larger problem.

At all events it would seem that the easier way to codify is to attack the less contentious subjects first. There are plenty of topics in the field of international law which are fairly well agreed upon, which in any case are not of a character to stir up painful differences. One could approach the rights and duties of diplomatic agents, for instance, without trepidation; the laws regulating consuls; the law regulating the status of aliens and their property; the acquisition of territory; territorial waters; jurisdiction on the open sea and in the air; extradition, copyrights, and so on. Many of the topics included in neutrality are not unduly controversial. Land warfare rules are already covered but need revision. Naval war rules could wait.

The suggestion then is that, consciously and progressively, states shall attempt codification of the rules and usages which govern their relations. That they do this piecemeal, step by step, this season a little, next season a little

more, attacking the easier problems first, putting conclusions into treaty shape and ratifying them, building up a body of law which shall be avowedly a Code of International Law. It might take years to become complete. But so far as it went, it would be the law interpreted and enforced by the Permanent Court of International Justice. Such interpretation of the law in any court adds to it certainty, clarity and authority. Where experience shows that change is desirable either in the law or in its phraseology, it could be worked over in conference and its treaty expression amended. Provision should be made for such a process, for it is one of the objections to a code of law that it tends to become hide-bound, that it lacks flexibility.

If the suggested method of codification got well under way on the line of least resistance, it appears to the writer probable that it would grow easier as the international mind became habituated to the process. The way to begin is for one State, the United States for instance, to invite other States to join it in a conference, the delegates to be jurists of repute, to discuss the desirability of a code of international laws and usages to govern their relations, and if agreed to refer to a subcommittee or committees one or more topics, these committees to report their codified rules back to the main body of delegates. Upon the adoption by the Conference of any chapter of rules, the remaining step would be ratification by each State concerned.

Here comes in a vexing question. Suppose codes covering the greater part of the law to have been drafted and ratified by some, but not all, of the nations taking part in the movement. Shall they govern those who accept them in their relations with those who do not? Such is not the present usage. This was Germany's excuse for many of her violations of the rules of land warfare. Would it be reasonable to allow a subject of the Soviet Government in Russia to enjoy property rights in France when there was no reciprocity? Probably not. Recourse must be had to time and the force of public opinion to bring all nations into line.

In the suggestion thus outlined, it has been assumed that the codification of international law is desirable. This is not the universal judgment. Objectors refer to "differences of language and of technical juridical terms." They assert that "codification would cut off the organic growth and future development of international law" through usage into custom. They argue that a court fosters hair-splitting tendencies, an interpretation which emphasizes the letter rather than the spirit. Codification, while removing some controversies, may induce others. The first objection is applicable to many treaties. Provision for periodical revision would cure the second. A court properly made up should not lean to technicalities overmuch. If it developed thus, its personnel would be changed. If the political world is not ripe for an honest attempt to make certain the laws which govern its relations now, it never will be.

THEODORE S. WOOLSEY.

THE STATUS OF MR. BAKHMETEFF, THE RUSSIAN AMBASSADOR AT WASHINGTON¹

We have searched the records in vain for a historical parallel to the strange case of Mr. Bakhmeteff, the Russian Ambassador at Washington still representing a government (the Kerensky régime) which has been defunct for nearly five years, and which enjoyed a short-lived existence of but a few months in 1917.

Most of the cases cited by the authorities bearing on the termination of diplomatic missions deal with the recall or dismissal of ministers and lack applicability to this case. Among the eleven different causes resulting in the termination of a diplomatic mission, Oppenheim (Vol. I, 3rd ed., pp. 581 ff.) includes "revolutionary change of government in the sending or receiving state."

This Anglo-German authority, who among all the publicists consulted, treats this particular topic most carefully, distinguishes between the "termination" and mere "suspension" of diplomatic missions. He says that "the termination of diplomatic missions must not be confounded with their suspension. Whereas from the foregoing eleven causes a mission comes actually to an end, and new letters of credence are necessary, a suspension does not put an end to the mission, but creates an interval during which the envoy, although he remains in office, cannot exercise his office."

He adds: "Suspension may be the result of various causes, as for instance, a revolution within the sending or receiving state. Whatever the cause may be, an envoy enjoys all his privileges during the duration of the suspension."

From which it appears that in Oppenheim's view a revolutionary change may result either in the termination or mere suspension of the diplomatic mission. But he does not clearly indicate the differing circumstances causing these different results, though he is clear on the point (p. 585) that "a revolutionary movement in the sending or receiving state which creates a new government, changing for example, a republic into a monarchy or a monarchy into a republic, or deposing a sovereign and enthroning another, terminates the missions. . . . It happens that in cases of revolutionary changes of government, foreign states, for some time, neither send new letters of credence to their envoys nor recall them, watching the course of events in the meantime, and waiting for more proof of a real settlement. In such cases the envoys are, according to an international usage, granted all privileges of diplomatic envoys, although in strict law they have ceased to be such."

There seems to be a difference of opinion among the authorities as to whether a revolutionary change in the form of government results in the termination or mere suspension of a diplomatic mission.

¹ Written before the publication of the letter of Mr. Bakhmeteff to Secretary of State Hughes dated April 28, 1922, and the Secretary's reply of April 29th. (For the letters referred to, see *The Washington Post*, June 5, 1922).—Ed.

Thus Hall (5th ed., p. 304) notes that "there is some difference of opinion as to whether the death of a sovereign to whom an ambassador or minister is accredited in strictness necessitates a fresh letter of credence, but it is, at least, the common habit to furnish him with a new one; though the practice is otherwise when the form of government is republican."

He adds: "A like difference of opinion exists as to the consequences of change of government through revolution, it being laid down on one hand that the relations between the state represented by a minister or other diplomat and the new government may be regarded as informal or official at the choice of the parties, and on the other that a new letter of credence is not only necessary, but that the necessity is one of the distinctive marks separating the position of a diplomatist from that of a consul. Practice appears to be in favor of the latter view."

In his *Digest of International Law*, Moore (IV, p. 472) thus summarizes the American viewpoint: "A change in the government of the country to which a minister is sent, although it involves furnishing him with new credentials to the ruling authorities, does not terminate the mission."

And in his recent treatise on *International Law as Interpreted and Applied by the United States* (I, p. 730), Hyde observes: "The change of a head of a state, or the change of its government, is not believed to terminate a foreign mission. The utmost consequence of either event is the suspension of the functions of the minister until the presentation of new letters of credence."

On the main question as to whether a revolutionary movement in the sending or receiving state has the effect of terminating or merely suspending diplomatic missions, it would seem that this should be made to depend upon the success or failure of the movement. If the revolution succeeds and the former government is definitely overthrown, diplomatic missions, whether sent by or accredited to it, should be regarded as having terminated once and for all. So long as a state of uncertainty prevails as to the issue of the revolutionary movement, the missions may be looked upon as suspended during the interval. If the movement definitely fails, their former status may be said to revive.²

Applying these principles to the strange case of Mr. Bakhmeteff, does it not seem reasonably clear that his mission should have been regarded as at an end as soon as it was reasonably clear that the Kerensky régime which he represented was definitely overthrown, and that there was little or no prospect of its revival? In any case, official intercourse with him and his aids should have been suspended during the longer or shorter period of uncertainty which appears to have existed in the official mind at Washington after the establishment of the Russian Soviet Republic in November, 1917. If this had been done, much subsequent embarrassment might have been avoided, and our Government would not find itself in its present awkward position.

² See Pradier-Fodéré, *Traité*, III, p. 462, on this point.

Of course our Government is probably as much within its rights in continuing to recognize an ambassador from a government which has long ceased to exist as it would be in recognizing one purporting to come from the planet Jupiter or some island in the Pacific Ocean which had been destroyed by a volcano or an earthquake. And as long as we continue to recognize him, he is entitled, by custom and courtesy at least, to diplomatic privileges and immunities.

As Satow (*Diplomatic Practice*, I, p. 368) observes: "Whatever may be the causes that lead to the termination of a mission, the minister remains in possession of the immunities and privileges attached to his public character until he leaves the country to which he has been accredited."³

AMOS S. HERSHEY.

THE SWISS DECISION IN THE BOUNDARY DISPUTE BETWEEN COLOMBIA AND VENEZUELA

On March 24, 1922, the Federal Council of Switzerland rendered its award upon certain boundary disputes pending between Colombia and Venezuela.

The dispute, as is so often the case between nations, has a long history. It was due, in first instance, to the uncertain boundaries of the Spanish possessions in America, and the desire of the Republics succeeding to the Spanish dominions in America to render definite what had been indefinite with due regard to their respective interests. There is one passage from the award which should be quoted by way of introduction, as it lays down a principle common to the Spanish-American Republics, and suggests a connection with a famous doctrine of North-American origin, which did not escape the keen eye and trained intelligence of the arbitrator. In English, of course the text is in French, this part of the award is as follows:

When the Spanish colonies of Central and South America proclaimed their independence in the second decade of the nineteenth century, they adopted a principle of constitutional and international law to which they gave the name of *uti possidetis juris* of 1810. The principle laid down the rule that the boundaries of the newly established republics would be the frontiers of the Spanish provinces which they were succeeding. This general principle offered the advantage of establishing the absolute rule that in law no territory of old Spanish America was without an owner. To be sure there were many regions that had not been occupied by the Spanish and many regions that were unexplored or inhabited by uncivilized natives, but these sections were regarded as belonging in

³ As if in some doubt as to whether this statement is not too absolute, Satow adds: "In any case, his person continues to be inviolable." Vattel (IV, chap. 9, p. 125) indicated as the reason for the retention by an ambassador of his diplomatic rights and privileges after the termination of his mission that he must "return to his principal, to whom he is to make a report of his embassy." This reason can hardly be said to be operative in the case of Mr. Bakhmeteff.

law to the respective republics that had succeeded the Spanish provinces to which these lands were connected by virtue of old royal decrees of the Spanish mother country. These territories, although not occupied in fact, were by common agreement considered as being occupied in law by the new republics from the very beginning. Encroachments and ill-timed efforts at colonization beyond the frontiers, as well as occupations in fact, became invalid and ineffectual in law. This principle also had the advantage, it was hoped, of doing away with boundary disputes between the new states. Finally it put an end to the designs of the colonizing states of Europe against lands which otherwise they could have sought to proclaim as *res nullius*. The international status of Spanish America was from the very beginning quite different from that of Africa for example. This principle later received general sanction under the name of the Monroe Doctrine, but had long before been the basis of South American public law.¹

As long as Colombia and Venezuela were united, the delimitation of boundaries was not so important as it became after 1830, in which year the union of Venezuela, Colombia and Ecuador was dissolved, each state asserting the independence which it has since maintained. Finally, on September 14, 1881, the representatives of Colombia and of Venezuela signed a treaty of arbitration submitting to the Crown of Spain the question of boundaries between the United States of Colombia and the United States of Venezuela.

The decision was not to be a compromise. The government of His Majesty the King of Spain was to decide the disputes as a judge according to principles of law—the French phrase—“*en qualité d'arbitre Juge de droit*”. Each of the contracting governments was to present its side of the case within eight months after His Majesty had been invited to act as arbiter. The award was to determine once and for all the boundaries in dispute between the two countries, and the award itself was to become binding immediately upon its publication in the official *Gaceta* of the government rendering it.

A difficulty which had not been foreseen arose, because of the death of Alphonse XII in 1885. Apparently there were intimations that it might be impossible to draw the lines in accordance to law, and that it would be desirable in such case to allow the arbiter to exercise his discretion. Therefore, on January 15, 1886, there was signed what is called “The Act of Paris”, completing the arbitration agreement of September 14, 1881. In the first place, the plenipotentiaries of Colombia and Venezuela agreed that the submission was really to the government of Spain, not to the particular person who happened to be King at the time when the agreement was made and that, therefore, the government of the Queen Regent would be authorized to render the award in place of His Majesty Alphonse XII, who had died in the meantime. It was also agreed that the arbiter should fix the boundary in the manner which he felt would best accord with the documents whenever

¹ *Sentence arbitrale du Conseil Fédéral Suisse sur diverses questions de limites pendantes entre la Colombie et le Venezuela, Berne, 24 Mars 1922.* Neuchâtel, Imprimerie Paul Attinger, 1922, pp. 5-6.

they were not sufficiently clear. On March 16, 1891, the award was rendered, and on that day published in the Gazette of Madrid.

It does not seem necessary for present purposes to consider in detail the text of this award, inasmuch as there has since been a re-submission to the Swiss Federal Council. Suffice to say, that the award divided the territory in dispute into six sections, the second and fourth of which were decided by agreement of the parties in litigation. The disputes regarding boundaries in the first and third sections were decided as a judge in accordance with law; the fifth section in accordance with the discretion of the arbiter; the sixth section was divided into two parts, the disputes within the first section being decided according to law, those of the second part according to discretion.

Years passed, and the frontiers were not marked, and the disputes, therefore, were not eliminated.

On December 30, 1898, a pact or convention was signed by representatives of Colombia and Venezuela to put into practical effect the award of the Crown of Spain. Two commissions were to be appointed, composed of an engineer and a legal adviser of each of the two countries, together with such engineers and assistance as should be considered useful. One commission was to fix the boundaries of sections 1, 2, 3 and 4; the other commission section 5 and the two parts of section 6. In order to eliminate causes of delay, it was provided that, in case of dispute about any particular section, the controversy should be submitted to the two governments, and the commission meanwhile continue its labors on other parts of the line without awaiting the decision of the governments.

It was further provided that Colombian or Venezuelan citizens within transferred portions of territory, should retain their citizenship unless they should renounce it within a period of six months.

It was finally provided that in case of the failure of one or the other government to appoint the members of the two commissions, the members appointed by the other should act for the commission. Both governments appointed their respective members, and the commissions were established.

Unfortunately, internal troubles prevented them from finishing their labors, and serious disputes arose which could not be settled by the two countries. Colombia maintained that each country should take possession of the territory assigned to it by the boundary lines as far as they had been drawn; Venezuela, on the other hand, that possession should not be taken until the boundary lines had been completed. This question among others, the two Republics decided to submit to the President of the Swiss Confederation, in order that the award of the Spanish Crown should be carried into effect.

By a supplemental agreement of July 20, 1917, at the date of the exchange of ratifications of the treaty or convention of arbitration of November 3, 1916, the Swiss Federal Council was substituted for the President of the Confederation.

Having appointed mixed commissions to fix the boundaries in accordance with the arbitral award of the Spanish Crown, which had, for one reason or another, failed to do so or to complete their work, the convention of arbitration provided that the President of the Swiss Confederation should appoint experts, who should be persons of the same nationality as the arbiter, that is to say, Swiss citizens. Inasmuch as the experts are Swiss and are subject to the direction of the arbiter, it is to be presumed that the frontiers of the two countries will be delimited in the near future.

It was apparently the intention of the high contracting parties to negotiate a treaty regulating the navigation of the rivers common to both, the commerce in the frontier districts and during its transit through the two Republics. It was therefore provided in the convention that if this treaty of navigation and commerce should be concluded before the award, the arbiter should take note of its terms in so far as they might affect the questions in dispute; if the treaty of navigation and commerce were concluded after the award, that its terms should be modified in accordance with the provisions of the treaty. The treaty has, however, not been concluded.

The award of the Swiss Federal Council was rendered on March 24, 1922. It decided that the portions of the frontier settled by the award of the Crown of Spain, and as well as those fixed by the mixed commissions, constituted under the pact or convention of December 30, 1908, should be carried into effect without awaiting the final determination of all of the boundary disputes in question, and that the territory awarded to Colombia or Venezuela should be taken possession of and occupied by the authorities of one or the other country. That there might be no doubt about this phase of the subject, the award specified the sections which were to be occupied, and likewise specified the sections or portions thereof to be excepted from such occupation until the experts to be appointed by the Swiss government should have fixed the boundaries which were still in dispute.

The award is accompanied by an elaborate historical introduction, which gives an added value to the decision. Indeed, it is only fair to say that the arbitral awards whether rendered by the Swiss government or by Swiss publicists are models of their kind.

JAMES BROWN SCOTT.

HAGUE ARBITRATION COURT AWARD IN THE FRENCH CLAIMS AGAINST PERU

On October 11, 1921, the Hague Court of Arbitration made its award in the case of the French Claims against Peru. The *compromis* for this case was signed on February 2, 1914, and it provided for summary procedure in accordance with Chapter 4 of the Hague Convention of 1907. The three arbitrators were Mr. Sarrut, President of the Court of Cassation at Paris, and Mr. Elguera, former Minister Plenipotentiary and Mayor of Lima, and these together named as a third member Mr. Ostertag, President of the Swiss

Federal Court. The written cases were presented January 31, 1920, and the counter cases, January 26, 1921. The court met at The Hague on October 3, 1921.

In this case Dreyfus Brothers & Company had obtained by a contract of August 17, 1869 from the State of Peru two million tons of guano with the privilege of monopoly sale in the markets of Europe and its colonies. The company had bound themselves in advance by the payment of certain sums. Ten years after the contract the dictator, Piérola, seized the Government of Peru. There were many disputes as to outstanding Peruvian obligations. The Dreyfus Company wrote to Piérola that they were willing to entrust "to him the decision of the questions in dispute and that they accepted his decision in advance." He fixed the balance due the company on June 30, 1880 at £3,214,388, 11s. 5d. In 1881, Piérola's government might be said to be generally recognized. Later, however, it was overturned and in 1886 a Peruvian law declared "all the internal acts of the government performed by Nicolas de Piérola null."

The award of the Court of Arbitration was, subject to certain deductions for payments already made, etc., in favor of the French claimant. The award does not allow capitalization of interest, but only simple interest.

This award supports previous decisions of the Hague Court of Arbitration in some respects, as may be seen by reference to the case of the United States and Venezuela in the Oronoco Steamship Company in 1910 and to the case of Italy and Peru in the claims of the Canevaro Brothers in 1912. The award also reaffirms the principle repeatedly supported by the court that the responsibilities of the State are not divested by a mere change in the personnel of the government, a principle that is necessary for the maintenance of stability in international relations.

In 1910 France and Peru had agreed to submit to arbitration the claims of French creditors presented by the *Banque de Paris et des Pays-Bas* and it is from a sum of twenty-five million francs that the claims involved in this award are to be paid by a pro rata adjustment.

Possibly this award may be regarded as an illustration of the application of Hague Convention II of 1907 embodying the Drago Doctrine.

GEORGE GRAFTON WILSON.

REPORT OF THE INTERNATIONAL COMMISSION OF INQUIRY IN THE LOSS OF THE DUTCH STEAMER TUBANTIA

Under the convention of March 30, 1921, Germany and Holland agreed to refer the question of the loss of the Netherlands steamer *Tubantia*, to a Commission of Inquiry. This commission consisted of Mr. Hoffmann, former member of the Swiss Federal Council, Rear Admiral Surie of the Dutch Navy, Captain Ravn of Denmark, Captain Unger of Sweden, and Captain Gayer of Germany.

The *Tubantia* was sunk March 16, 1916, by a torpedo. The torpedo was identified as German torpedo No. 2033. The sinking had led to much correspondence between Holland and Germany, and finally a commission of inquiry was agreed upon. The torpedo was from U-boat 13. The Germans maintained that this torpedo had been launched at a British vessel on March 6, 1916 at 4:43 P.M., and that through defects in the mechanism or for other reasons it may have remained afloat for ten days till struck by the *Tubantia*.

The commission admitted evidence that the wake of a moving torpedo was seen just before the *Tubantia* was struck, that parts of Torpedo No. 2033 belonging to U-boat 13 were found in the boats of the *Tubantia*, that the log-book of the U-boat does not give authentic data as to its location at the time of the sinking of the *Tubantia*, that it was not impossible that the *Tubantia* might have been sunk by a floating torpedo, but the conviction of the commission is "that the *Tubantia* was sunk on March 16, 1916, by the explosion of a torpedo launched by a German submarine. The question of the determining whether the torpedoing took place knowingly or as the result of an error of the commander of the submarine must remain in suspense."

Thus the responsibility is placed upon the German submarine, as was contended by Holland at the beginning, and this conclusion of the Commission of Inquiry rendered on February 27, 1922, puts an end to a longstanding controversy.

GEORGE GRAFTON WILSON.

INTERNATIONAL RESPONSIBILITY IN HAITI AND SANTO DOMINGO

The grave problem of international responsibility is most vividly presented in the prolonged intervention of the United States in the affairs of Haiti and Santo Domingo. "A stain has attached to our national honor, which, unless speedily expunged, will become an indelible blot," according to the report of twenty-four American lawyers of repute issued under the auspices of The Foreign Policy Association of New York City.

The facts concerning this situation may be ascertained by consulting the reports of the "Hearings before a Select Committee on Haiti and Santo Domingo, United States Senate." This special committee of the Senate conducted a most thorough and fair investigation in these countries, where natives and foreigners alike were given every possible opportunity to present their testimony. Part Four of these reports embodies a special report by Professor Carl Kelsey of the University of Pennsylvania, who spent several months in these Republics making an independent impartial investigation of great value. Mr. Lansing, former Secretary of State, under date of May 4, 1922, addressed to Hon. Medill McCormick, Chairman of the Select Committee on Haiti and Santo Domingo, a letter giving most important diplomatic information concerning the grounds for intervention.¹ This JOURNAL

¹ See Congressional Record, Vol. 62, No. 122, page 7081.

has had occasion to comment editorially on the separate interventions of the United States in Haiti and in Santo Domingo.²

Space will not permit a detailed resumé of the various charges brought against American intervention. It is only possible to consider the principles involved. Criticism has been directed firstly, against methods, and secondly, against the right of intervention.

Concerning the methods employed, there is evidently room for criticism. Most serious charges have been made against various American officials. Whether these charges are well-founded or not, it would appear that sufficient consideration has not always been shown for the natural sensitiveness of the people of Haiti and of Santo Domingo. The *Documents Diplomatiques* of correspondence with the United States as published by the Government of Haiti reveals at times a certain curtness and stiffness of tone not calculated to facilitate friendly diplomatic intercourse.

Given the extraordinary situations to be faced and the inevitable human equation, it is but natural, of course, that there should be considerable criticism of American methods in Haiti and Santo Domingo. The officials charged with the heavy task of supervising the internal and external affairs of these two unhappy republics are not angels endowed with superhuman wisdom and patience. Not all were equal to their tasks; not all worthy of their high responsibilities. But this demands great charity; not unbridled denunciation.

It is extremely difficult for an outsider to visualize fairly the problems of American officials charged with the grave responsibility of dealing with the baffling conditions in these countries. The attempt to apply to Haiti and Santo Domingo the same standards of procedure as might be invoked in Rhode Island is as unjust as it is unwise. To demand the employment of "the methods that obtain between free and independent sovereign states"—to quote the protest above cited—is to ignore the realities of the situation in the Caribbean and in other parts of the world.

The inequalities, moral and material, between nations are so marked in many instances that immense charity and good sense is required in international intercourse. Certain peoples in a retarded stage of political development cannot reasonably be held to rigid interpretations either of constitutional or of international law. Free elections in a good many countries would mean the elimination of those most fit to govern. Some nations clearly require great forbearance and assistance in the fulfillment of their international obligations. Legalistic theories and the tenuous refinements of abstract principles must not be permitted to thwart any genuine efforts to help raise the general average of civilization and to fit peoples for international privileges and obligations. There are no universal inflexible rules to be followed in all nations alike.

² See Vol. 10, page 859 (1916), and Vol. 11, page 394 (1917).

Criticism of methods, however, except as a wholesome corrective of public abuses, is of lesser importance than criticism of policies. Methods may be easily changed; policies are not so readily altered. If men are not agreed concerning policies, they naturally cannot agree concerning methods.

Criticism of American intervention in Haiti on grounds of policy has been based on the denial of the right to intervene either under the Constitution or under international law. It has been asserted by the twenty-four lawyers that, "the imposition and enforcement of martial law without a declaration of war by our Congress and the conduct of offensive operations in Haiti . . . prior to the acceptance of the treaty (of 1915) by Haiti were equally clear violations of international law and of our own Constitution."

The right of the President under the Constitution to intervene in foreign lands, as well as the nature of the military administration he may establish, were discussed in the editorial already cited (Vol. 11, p. 394.) It was there pointed out that the power of the President as Commander-in-Chief of the Army and Navy to conduct and to protect the foreign relations of the nation is most sweeping and comprehensive. This is clear in his enforcement of treaties, which are a part of the law of the land according to the Constitution; and, on technical grounds at least, would justify intervention in Santo Domingo. It would also seem clear in the President's power to protect American citizens abroad, as in the conspicuous instance of the military expedition to China during the Boxer uprising. The Supreme Court cited *In Re Neagle* (135 U. S. 1) the instance of the drastic action of Captain Ingraham of the U. S. sloop of war *St. Louis* in protecting Martin Koszta in Smyrna in 1853; and it did not seem to question the general right of the President under the implied powers of the Constitution to resort to extreme measures for the protection of national rights and interests.

Mr. Edward S. Corwin, in his book on *The President's Control of Foreign Relations*, stresses the fact that the Supreme Court has always been scrupulous to express no opinion on "political questions" which concern the field of diplomacy:

Incidentally to the discharge of his diplomatic functions the President—and for that matter, Congress too, when action touches foreign relations—finds it necessary to decide many questions of a juristic character, questions involving the interpretation of treaties and other bilateral agreements, or even of the Law of Nations. Now it is the practice of the Court, when such determinations fall clearly within the diplomatic field, that is, are made with jurisdiction, to treat them not only as final but also as establishing binding rules for all future cases in which the same questions are raised collaterally. (p. 163).

The right of the President to land American troops on foreign soil and to set up a military administration may be open to grave abuse. Such power is undoubtedly portentous; but there would seem to be no justification for the assertion that such action is "a clear violation" of the Constitution. There

has certainly been no decision of the Supreme Court to this effect; nor is there reason to believe that the Court, in view of its traditional attitude towards "political questions," would ever wish to limit the freedom of action of the President in the protection of the foreign rights and interests of the nation.

It will be recalled that President Grant's intervention in Santo Domingo aroused violent criticism. Senator Sumner, in 1871, with the eloquent support of Senator Schurz, introduced a resolution denying the right of the President to employ the Navy "without the authority of Congress in acts of hostility against a friendly foreign nation, or in belligerent intervention in the affairs of a foreign nation." Senator Harlan by an appeal to numerous historical precedents effectively showed that it would be unwarranted to impose embarrassing restraints on the power of the President to protect national rights and interests in foreign lands.³

The most serious criticism against American intervention in Haiti and in Santo Domingo is not against the methods employed or the alleged violation of the Constitution, but against the right of any intervention under international law. There would appear to exist a considerable group of theorists who deny absolutely the right of one nation to intervene in the affairs of another.

It is undoubtedly true that the international law publicists are in substantial accord in denying the right of intervention. They recognize that the rights of independence, sovereignty, and equality of nations compel them to observe the strict obligation of non-intervention. While this is true theoretically, it is obviously at variance with precedents and that general usage on which the law of nations is based. It is not difficult to demonstrate that intervention is not merely tolerated, but fully justified, in certain instances, as a proper means of redress for offences against humanity and justice. If no intervention, either collective, under a mandate, by right of treaty, or for the protection of citizens from outrage, or for the expiation of crimes, were to be permitted; if the claims of humanity and justice were to be ignored, civilization would sink to lower levels: international society would soon fall into chaos.

As a matter of fact, the international law publicists, while insisting on the abstract principle of non-intervention, are constrained to concede such important concrete exceptions that the result is to concede the right of self-redress when other remedies are unavailing. Mr. Ellery C. Stowell in the preface to his admirable work on *Intervention in International Law* has soundly observed that: "Intervention in the relations between states is, it will be seen, the rightful use of force or the reliance thereon to constrain obedience to international law." And Oppenheim also adds: "there are interventions which take place by right, and there are others which, although they do not take place by right, are nevertheless admitted by the Law of Nations, and are excused in spite of the violation of the Personality of the respective States which they involve."⁴

³ See Corwin, *op. cit.*, page 158.

⁴ *International Law*, Vol. I, p. 222, 8d edition.

It is not to be believed that, though the signers of the protest above referred to consider American intervention in Haiti and Santo Domingo as violations of international law, they are oblivious to the needs of these unfortunate nations. They can hardly be understood to enunciate the cynical doctrine that every nation should be free to go to perdition in its own way. They are doubtless aware of the opinion held by many competent observers that, distasteful as American intervention has been to patriots of these republics, they would view with alarm the immediate withdrawal of the troops and officials of the United States. It is true that some of these critics would appear to impute the basest of motives to American intervention, namely, the desire for naval bases or for financial and commercial exploitation. Such critics present no proofs for these accusations and are therefore not entitled to serious consideration. Those other critics, however, who honestly consider intervention of any kind as "clear violations" of international law and of the Constitution of the United States are entitled to every possible consideration. It is to be hoped that they will not permit their abstract theories to obscure the necessity of practical measures of help to the peoples of Haiti and Santo Domingo to enjoy the blessings of law and order, and to be able adequately to meet all their international obligations. A descent respect for the opinions of others should constrain them to attach especial significance to the repeated warnings of Presidents Roosevelt, Taft, Wilson, and Harding against the dangers of diplomatic complications in the strategic waters of the Caribbean Sea. The statement of policy by Secretary Hughes made on April 29, 1922, to the delegation which presented the protest already cited, should be accepted in the utmost good faith by all fair-minded men:

This Government is proceeding in this matter at this time in the desire to secure, in the first place, an effective co-ordination of the action which is being taken in connection with administration, so that difficulties which have existed in the past may be removed. It is also considering all that is essential for the tranquility and well being of the people of Haiti, and, of course, we are most desirous that the military occupation shall end as soon as it can properly end.

PHILIP MARSHALL BROWN.

THE REVISTA DE DERECHO INTERNACIONAL

For the past ten years a Spanish translation has been made of the American Journal of International Law. The success with which it has met has led to the conclusion that there is a demand in the Spanish-American Republics for a journal in Spanish. It is believed, however, that a journal appearing in the Spanish language, edited by a Spanish-speaking publicist and published in one of the Spanish-American countries, would more adequately meet the demand of which the Spanish translation of the American Journal of International Law has demonstrated the existence. Indeed, there are now two American journals of International Law appearing in Spanish;

one, the *Revista Mexicana de Derecho Internacional*, published in Mexico City, the capital of the Republic of Mexico, since March, 1919, and the *Revista Argentina de Derecho Internacional*, published since September, 1920, in the City of Buenos Aires, the capital of the Republic of Argentina.

It has, therefore, been decided that with the completion of the tenth year, the Spanish translation of the American Journal of International Law should be discontinued, and that it should be replaced by the *Revista de Derecho Internacional*, a quarterly periodical to be composed of original articles edited by the distinguished publicist, Dr. Antonio S. de Bustamante y Sirvén, and to be published in the City of Habana, the capital of the Republic of Cuba.

It has further been decided that it should appear as the organ of the American Institute of International Law, which suspended its sessions during the war, in which the United States and some of the Latin-American Republics were involved, and which will shortly resume its activities, just as the Institute of International Law suspended its meetings during the war and has already held one official session.

The *Revista de Derecho Internacional* will be independent of the Spanish edition of the American Journal of International Law which it succeeds. It will, however, in one respect resemble the American Journal of International Law, in that it will be the organ of the American Institute just as the English Journal is the organ of the American Society of International Law. There is another point of resemblance. Stress will be laid upon International Law as it is understood and applied in the American Republics. It will, like the American Journal, be a journal of International Law, not of politics. It will have a more fortunate effect than the American Journal. It will appeal to the publicists of 18 American Republics speaking the language in which it appears, and it is hoped that Spanish publicists will, from time to time, honor its pages with their contributions. Edited by Dr. Bustamante it is sure to be worthy of the subject which it professes. Appearing in the Spanish language and in a Latin-American atmosphere, it will assuredly set forth and embody the views and aspirations of Spanish-speaking publicists. It will, it is hoped, find favor in the sight of Spanish-American publicists, serving as a convenient means of communication, and interpreting the enlightened views of the Spanish-speaking world to the world at large.

The Board of Editors of the American Journal of International Law welcomes the entry of the *Revista de Derecho Internacional* into the field of foreign relations, wishes it the greatest of success and influence in its exposition of the principles of International Law as a guide to the conduct of nations; for, notwithstanding the differences of language and the national traditions, Americans one and all, stand for the principles of justice expressed in rules of law, which shall control the conduct of nations in the future, as they have the actions of individuals in the past and the present.

JAMES BROWN SCOTT.

CURRENT NOTES

THE ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW

The Sixteenth Annual Meeting of the American Society of International Law was held, according to the program sent to the members and printed in the last number of the Journal, pages 274-275, at Washington, April 27-29, 1922.

The Honorable Elihu Root, President of the Society, opened the meeting on the evening of April 27 with a carefully prepared address on the subject of "International Law at the Arms Conference", in which he reviewed the general nature of the Conference work as a whole. Speaking of the Four-Power Treaty, concluded between Great Britain, France, Japan and the United States, he said:

I doubt if any formal treaty ever accomplished so much by doing so little. It provided that we should all respect rights, which we were bound to do already, and that if controversy arose about the Pacific islands (it was quite immaterial what islands), the parties should get together and talk it over, which was the very thing they were then doing in Washington. The consent of the Senate was not necessary to such an agreement. It merely arranged for following an ordinary form of diplomatic intercourse. The President had done the same thing at Algeciras and at The Hague and at the Conference of London without asking the consent of the Senate, and the Senate had ratified the conclusions reached at those conferences. It was important, however, that the Senate should give its approval in this case because the instrument was a formal certificate to all the people of Japan and all the people of the United States and all the civilized Powers that the parties to the treaty had abandoned their mutual distrust and had ceased to think about war with each other and had resumed relations of genuine friendship.

Mr. Root then described the work of the Conference in removing further causes of irritation incident to the contacts of Western civilization with the peculiar and widely different civilization of China and other Oriental countries. "It is difficult to determine", he said, just how far China and the other countries "have been admitted to the family of nations who are entitled to the benefits and subject to the obligations of international law", and, after pointing out that the conditions out of which China's present difficulties have arisen were created in the early years when China was unable to comply with the rules of international law and her relations with other Powers could only be governed by "the moral right to be treated fairly and decently and her obligation was a moral obligation to treat others in the same way",

Mr. Root said, "It is also clear that the continuance of the same inability to perform international obligations has down to the present time prevented the full admission of China to the circle of states governed by international law, notwithstanding her inclusion in diplomatic conferences and regular diplomatic intercourse".

He reviewed the treaty relations between China and the Western countries and the action of the Conference at Washington with relation to the subjects covered by these treaties. Referring to the Washington treaties and resolutions, Mr. Root said:

Any one examining the treaties and resolutions will find that they uniformly sought a double object, first, to relieve the limitations and inconveniences flowing from the old conventional relations as far as was then practicable under the existing governmental conditions in China, and second, to afford to all sections and parties of the Chinese people a helpful incentive to unite in the establishment of an effective and stable government by making specific provisions under which such a government, competent to perform its national duties, will be the means of bringing China into the full possession of the rights and liberties assured by international law to the members of the family of nations, just as Japan has been brought into that family.

In concluding this section of his address, Mr. Root paid the following tribute to the Chinese people:

Personally I am a believer in the coming of that event. It will be a long difficult process, for it requires the new education of more than four hundred million people, but I look to the future of that industrious, kindly, peaceable people, with their inveterate respect for individual and family rights, not as a yellow peril, but as a great reinforcement to the power of ordered liberty upon the domination of which the future of our civilization depends.

Mr. Root then gave a detailed explanation of the objects and purposes of the treaty relating to submarines, which he described as "an appeal to the public opinion of mankind to establish and maintain a fundamental rule of morals applied to international conduct in the form of a rule of international law". "We are all familiar", he said, "with the assertion that international law is not really law because it has no sanction. That is only a half truth and therefore misleading. The real sanction of international law comes from the punishing power of public opinion, a power which has been growing with great rapidity in recent years and bids fair to grow still more rapidly with the increased public participation in the conduct of foreign affairs." He continued:

I have no doubt that the provision of this treaty which serves to put such acts as the sinking of the *Lusitania* in the same class as piracy correctly registers and formally declares the deliberate opinion of the civilized world outside of Germany and of many people in Germany, and that this formal solemn declaration of the criminal quality of the

act will very greatly decrease the probability of its repetition by any nation hereafter because it will present the practical certainty of universal public condemnation which no nation can afford to incur.

Similar considerations, he said, applied to the provisions of the treaty prohibiting the use of poisonous gases.

Mr. Root summarized his remarks as follows:

It will be seen from what I have said that while the Washington Conference had no concern with the making of international law, it did naturally and effectively, as incidental to giving effect to its policy of limiting armament, take quite important steps in the direction of developing and strengthening international law.

It took one further step by resolution providing for the appointment of a commission to consider and report upon the condition and requirements of international law affecting the other new agencies of warfare which have produced so startling an effect upon military and naval conflicts.

The time has not yet come when international affairs are sufficiently settled to make immediately practicable a general conference to consider, clarify, extend and strengthen the law of nations, but it is already high time for those who believe in a world controlled by law, to begin their preparation for such a conference, and the Washington Conference on Limitation of Armament, as a by-product of its own special work, has contributed materially towards that preparation.

In a carefully prepared paper, Rear Admiral Harry S. Knapp, of the United States Navy, Retired, gave a professional analysis of, and comments on, the Treaty for the Limitation of Armament. He pointed out in what respects the Conference had fulfilled its purpose and in what respects it had failed of its purpose, as indicated in the American program. It appeared from his remarks that the American Navy had eventually made a greater sacrifice of naval power than was contemplated in the generous proposal of Secretary of State Hughes made at the opening of the Conference.

In a paper entitled "Principles of International Law and Justice raised by China at the Washington Conference", Professor Westel W. Willoughby, of Johns Hopkins University, who was the legal adviser to the Chinese Republic in 1916 and 1917, raised the following questions without attempting to answer them:

First, the circumstances under which, or the principles in accordance with which, the validity of existing agreements between sovereign nations may be attacked. The query had reference, of course, to the treaties and agreements between China and Japan of 1915, growing out of the so-called twenty-one demands of the latter. As subsidiary to the main question, Professor Willoughby queried: (a) Will China be justified, whenever she is in a position to do so with the possibility of success, in declaring the abrogation of these agreements? (b) Can it be said that these treaties and agreements of 1915 were invalid by reason of the fact that, taken in connection with the circumstances under which they were signed, they were in violation of

those fundamental principles of right upon which the whole body of international law is founded?

The second main question raised by Professor Willoughby was as to the binding force of treaties which have not been ratified by one or more of the parties signatory to them in accordance with the mandatory provisions of their respective systems of constitutional law, involving also a query as to the extent to which one Power in dealing with another Power is held to know the constitutional provisions of that other Power. The speaker asserted that, "It is a notorious fact that none of the treaties and other agreements entered into during recent years with China have received that parliamentary approval which its constitution requires." In this connection Professor Willoughby also queried as to the continuing force of executive understandings, such as the Root-Takahira agreement of 1908 and the Lansing-Ishii agreement of 1917. These kind of agreements, he stated, were the only evidence of some of China's alleged international obligations.

Professor Willoughby then raised a series of questions regarding the effect of China's declaration of war against Germany upon the treaties then existing between them. He also brought up the question of the right of China to denounce unilaterally trade agreements made with other Powers, and the principle of international law with reference to the right of one state to send into or to station its troops within the territory of another state for the protection of its nationals.

The opening session was concluded with an address by Mr. Frederick Moore, Foreign Councillor to the Japanese Ministry of Foreign Affairs, who briefly discussed some of the questions raised by the preceding speakers, and then entered upon not, as he stated, a justification of all that Japan had done in the Far East "because they are human and they have their difficulties, and their temptations also", but a statement in mitigation of the charges which have been made against them, many of which, he said, are unfair. The speaker discussed various matters and incidents relating to the relations of Japan and China which, together with official statements regarding Japan's foreign policy, he thought "ought to make clear the two vital interests of Japan in international affairs,—first, the necessity of seeing that no other great Power shall lodge itself in China that will become a menace to Japan; secondly, the necessity for Japan to obtain raw materials and agricultural supplies from the neighboring mainland and of marketing her manufactured goods there."

Mr. Moore quoted the following extract from the statement by Admiral Baron Kato, ranking Japanese delegate to the Washington Conference, in a public speech in New York on January 14, 1922:

An effort has been made for a number of years to present Japan to you as a military nation designing to dominate the Pacific. Some of us Japanese have tried to disabuse the minds of those who were wont to believe this calumny, but with many the charge remained unrefuted up

to the present Conference. Within these recent weeks, Japan, by accepting the 5-5-3 ratio, has given evidence which only the weak-minded will in future dispute; and at the same time this ratio is also assurance that you have no intention of assaulting us. We have never aspired or intended to challenge the security of America or her far-ranging possessions; we have sought only security for ourselves.

In conclusion Mr. Moore said:

The Conference of Washington, as Senator Underwood said, has given to China a *magna charta*. The nations have renewed their pledges to respect her sovereignty, and it will be very difficult for any of them to go seriously behind their agreements, even if any should want to do so. That coöperation of the Powers in China, as provided by the Conference treaties, will greatly benefit China, and next to China, Japan; and for that reason those Japanese leaders who understand, welcome the work of the Washington Conference. Understanding and coöperating mean peace among the Powers in the Far East, and must aid the prosperity of both China and Japan.

It is now for the Chinese to unify their country, create a condition of security for life and property within it, and establish their responsibility to others. When they have done that, as the Japanese did with conspicuously fewer resources and advantages, they will find equal facility in getting rid of the humiliation of extraterritoriality and the presence of foreign troops at their capital and elsewhere.

The Committee for the Advancement of International Law met on Friday morning at 10 o'clock under the chairmanship of Mr. Root, who urged upon the Committee the necessity of private initiative in restating the rules of international law affected by the war, formulating amendments thereto, reconciling divergent views, and considering the subjects not now adequately regulated by international law, for the eventual use of official international conferences when the governments are ready to act upon these subjects. He thought that unquestionably the time has come when such preparation ought to be going on.

Suppose (he said) that five years hence the world is in a sufficiently chastened and sober mood to sit down and think about such a thing as law, if they got together without material they would not be able to do anything. The Hague Conferences would not have been able to do anything if the work had not been done beforehand. They had well-matured and thought out plans to consider and say yes or no to them, and to make suggestions and criticisms about them. That process ought to be going on now. If everybody waits, they will wait until too late. Somebody ought to begin, get the thing going, get people to think about it, get people to make and formulate propositions. That is the only way to avoid a very disastrous result, when the political bodies ruling the states are ready to act.

The Committee then divided into four subcommittees dealing respectively with

(1) To restate the established rules of international law, especially, and in the first instance, in the fields affected by the events of the recent war.

(2) To formulate and agree upon the amendments and additions, if any, to the rules of international law shown to be necessary or useful by the events of the war and the changes in the conditions of international life and intercourse which have followed the war.

(3) To endeavor to reconcile divergent views and secure general agreement upon the rules which have been in dispute heretofore.

(4) To consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rule of law shall be declared and accepted.

The subcommittees conferred and discussed during the remainder of Friday morning and afternoon and submitted their reports Friday evening, April 28.

The evening session of April 28 was opened with an interesting paper by Baron S. A. Korff, Professor of Political Science in the School of Foreign Service of Georgetown University, Washington, D. C., on the subject of "The Equality of States". He strongly defended the principle of equality against the opposing principle of the domination of the great Powers, and reinforced his argument by comparing the number and influence of the so-called great Powers at the time of the Second Hague Conference, with the number and influence of the same Powers at the present time as the result of the World War.

Upon the conclusion of Baron Korff's interesting paper, Dr. David Jayne Hill presented an exhaustive and valuable report of Subcommittee No. 1 on the subject of "Visit, Search and Capture", in which it was stated that the subcommittee "having regard only to what is essentially uniform and constant in the instructions and prize codes of maritime nations, and reserving variations for subsequent discussion, . . . considers that the 'common law' regarding visit, search and capture, as accepted in substance by all maritime nations, may be codified in the following propositions:"

I. Belligerent war vessels have the right to ascertain the nationality and character of all vessels met on the high seas or in belligerent waters.

II. The war vessels of neutral Powers met by belligerent war vessels are exempt from visit and search, but it is the duty of a neutral promptly to signify his nationality.

III. Enemy vessels, except cartel and hospital ships, and a few others, are liable to capture outside of neutral jurisdiction.

IV. Neutral vessels under enemy convoy are liable to capture; neutral vessels under neutral convoy are exempt from search under the guarantee of the convoy commander.

V. Neutral private vessels met on the high seas are liable to visit; and, if their innocence is doubtful, to further examination and search.

VI. Neutral private vessels are liable to capture (a) if they attempt to avoid examination by flight or resistance; (b) if they carry contraband of war, except under special treaty exemptions; (c) if they attempt

to evade an effective blockade; (d) if they are guilty of unneutral service; (e) if they are under fraudulent convoy.

VII. Vessels liable to visit and search are entitled to summons to stop and lie to by a public belligerent vessel displaying its national flag, the summons being given by firing a blank charge or by other intelligible signal.

VIII. Visit consists of the appearance on board the merchant ship of one or more officers of the warship, bearing side arms, and accompanied by a few unarmed men who usually remain in the small boat while the officers examine the ship's papers. If these papers, showing the nationality, ownership, destination, and cargo of the ship, furnish satisfactory evidence of innocence, the vessel is to be released; if there is reasonable doubt, the ship may be searched; and, if evidence of guilt under Proposition VI, as above, is found, the vessel may be seized.

IX. The act of capture is signified by hoisting the flag of the captor on the vessel seized.

X. The captured vessel should then, if possible, be sent in under command or control of the captor for adjudication in a prize court of the captor's country.

XI. If the circumstances of the case after visit endanger the safety of the captor or involve the probable loss of the captured ship by recapture or unseaworthiness, the ship may be destroyed; but only on condition that the personnel, even of the enemy, be first removed from the ship to a place of safety and the ship's papers be saved for subsequent examination.

XII. No ship, not a vessel of war, is liable to attack and destruction, without previous visit and search, unless visit is evaded or resisted after summons; but the vessel is liable to the exercise of sufficient force to cause her to submit if she resists or attempts to escape.

On behalf of Subcommittee No. 2, Dr. Harry Pratt Judson, its chairman, presented a report on the subject of "The status of government vessels", which recommended the following formulation of rules:

1. Government vessels are those which are owned or requisitioned by or chartered to a government. If a vessel is controlled and directed by a government and employed for public purposes, it is immaterial whether the interest of the government is that of ownership, or is based upon charter or requisition.

2. A government vessel operated by the government for public purposes is immune from foreign judicial process.

3. A government vessel operated by private persons for commercial purposes is not immune from foreign judicial process.

4. A government vessel operated by the government for commercial purposes is immune from foreign judicial process, but injuries committed by such vessel should render the government liable in its own courts.

5. Municipal law determines the liabilities of government vessels in domestic courts.

6. Every government should accord, both by executive action and judicial decision, at least as favorable treatment to the vessels owned or controlled by a friendly foreign government as it accords to those owned or controlled by it.

7. Some convenient method of proof of the governmental character of foreign vessels should be adopted by international agreement.

Professor George Grafton Wilson, chairman of Subcommittee No. 3, presented a report on certain problems of maritime warfare, in which the subcommittee recommended the abolition of the distinction between absolute and conditional contraband of war and that "the doctrine of continuous voyage should not be extended beyond the principle: 'That the ultimate destination of a neutral vessel or cargo determines the liability of either to condemnation, but cargo otherwise innocent may become liable to condemnation if destined to aid the belligerent'".

Acting on behalf of Subcommittee No. 4, the chairman of which was unavoidably absent, Professor Jesse S. Reeves made an oral report on the subject of "Offenses which may be characterized as international crimes and procedure for their prevention", in which he outlined the difficulty as to the conception of an international crime, drawing a distinction between offenses recognized by international usage as "international" largely because of their universality, such as the slave trade, which are punished as crimes in accordance with municipal legislation, and international crimes in the strict sense involving the acts of persons in international law. He said that the subcommittee after full discussion came to the conclusion that not until the adoption of the Declaration of Washington relating to the acts of submarines had there been strictly speaking an international crime, having due regard to the word "international" and to the concept of crime. The provisions of this treaty, he said, introduced a new conception which points the way for an altogether different method of handling offenses which are international in the strict sense of the word. Other phases of the subject, such as other types of offenses which might be similarly designated with penalties, the international criminal liability of nationals of non-signatory Powers, and the nature of the court having jurisdiction over such offenses, the subcommittee, he reported, did not have time to consider.

Action upon the reports of the subcommittees was taken at the session on Saturday morning, April 29. After considerable discussion of the desirability of acting upon the recommendations, it was finally decided, in view of the limited time which the subcommittees had available for the preparation of the reports and which was available for discussion by the Society, to refer all of the reports with the recommendations to the Committee on Organization of Work for coördination, printing and distribution with a view to action at the next meeting on the Society.

In connection with the action upon these reports, there was a spirited debate as to whether the Society should confine its present work to consideration of the laws of war, as the result of which the following resolution was adopted:

Resolved, That it is the sense of this meeting that the Committee for the Advancement of International Law consider whether it is not within the purview of their plans to present to this Society at some forthcoming meeting the consideration of the feasibility of some international organization as a means of conducting the international relations of states.

After the adoption of the above resolution, it was further moved that all the members of the Society should be invited to present the topics which they consider fall within the purview of the work of the Committee for the Advancement of International Law and of the Society. Any members having such suggestions may send them to the Secretary, who will be glad to see that they are sent to the proper committee.

At the business session of the Society, which immediately followed, the amendment to the first two paragraphs of Article IV of the Constitution of the Society, printed in the last number of the Journal (April, 1922, p. 275), to provide an interval between the successive periods of service of members elected to the Executive Council, was adopted in the following form:

(Omit words in brackets and insert words in italics)

The officers of the Society shall consist of a President, an Honorary President, nine or more Vice-Presidents, the number to be fixed from time to time by the Executive Council, a Recording Secretary, a Corresponding Secretary, and a Treasurer, who shall be elected annually, and of an Executive Council composed of the [President, the Vice-Presidents] *foregoing officers*, ex officio, and twenty-four elected members, whose terms of office shall be three years, except that of those elected at the first election, eight shall serve for the period of one year only and eight for the period of two years, and that any one elected to fill a vacancy shall serve only for the unexpired term of the member in whose place he is chosen. *No elected member of the Executive Council shall be eligible for reelection until the next annual meeting after that at which his term of office expires.*

The Recording Secretary, the Corresponding Secretary and the Treasurer shall be elected by the Executive Council [from among its members]. The other officers of the Society shall be elected by the Society, except as hereinafter provided for the filling of vacancies occurring between elections.

The election of officers then ensued and the following were duly elected:

Honorary President

The Honorable WARREN G. HARDING
President of the United States.

President

Honorable ELIHU ROOT

Vice-Presidents

HON. CHANDLER P. ANDERSON
HON. SIMEON E. BALDWIN
JUSTICE WILLIAM R. DAY
HON. JACOB M. DICKINSON
HON. GEORGE GRAY
MR. CHARLES NOBLE GREGORY
HON. DAVID JAYNE HILL
HON. CHARLES E. HUGHES
HON. ROBERT LANSING

HON. HENRY CABOT LODGE
HON. JOHN BASSETT MOORE
HON. WILLIAM W. MORROW
HON. OSCAR S. STRAUS
HON. GEORGE SUTHERLAND
HON. WILLIAM H. TAFT
MR. EVERETT P. WHEELER
PROF. GEORGE GRAFTON WILSON
MR. THEODORE S. WOOLSEY

Members of the Executive Council to serve until 1925

EDWIN M. BORCHARD
 WILBUR J. CARR
 JOHN FOSTER DULLES
 CHARLES G. FENWICK

HARRY PRATT JUDSON
 ARTHUR K. KUHN
 JESSE S. REEVES
 ELLERY C. STOWELL

Pursuant to the amendment to the Constitution just adopted, the members of the Executive Council above named were all new men who had never served upon the Council. The Honorary President, the President and all of the Vice-Presidents were reelected, with the addition of the Honorable Chandler P. Anderson, the Honorable John Bassett Moore and Professor George Grafton Wilson to fill the vacancies caused by the deaths of the Honorable P. C. Knox, Honorable Horace Porter, and Chief Justice White.

Resolutions regarding the three deceased Vice-Presidents were unanimously adopted and spread upon the minutes, as was likewise a resolution relating to the late Lord Bryce.

At the meeting of the Executive Council which took place upon the adjournment of the Society, the following committees and officers were elected:

EXECUTIVE COMMITTEE

HON. CHANDLER P. ANDERSON	HON. DAVID JAYNE HILL
HON. GEORGE GRAY	ADMIRAL CHAS. H. STOCKTON
MR. CHARLES NOBLE GREGORY	HON. ROBERT LANSING
PROF. GEORGE G. WILSON	

EX OFFICIO

HON. ELIHU ROOT, *President*
 HON. OSCAR S. STRAUS, *Chairman*
 MR. CHARLES CHENEY HYDE, *Treasurer*
 MR. JAMES BROWN SCOTT, *Recording Secretary*
 MR. CHARLES HENRY BUTLER, *Corresponding Secretary*

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GEORGE A. FINCH

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Standing Committee on Increase of Membership: OSCAR S. STRAUS, Chairman; PHILIP MARSHALL BROWN, CHARLES CHENEY HYDE, JOHN H. LATANÉ, JESSE S. REEVES, WILLIAM C. DENNIS.

Auditing Committee: JACKSON H. RALSTON, CHARLES RAY DEAN.

*Committee on Annual Meeting:*¹ JAMES BROWN SCOTT, Chairman; PHILIP M. BROWN, WILLIAM C. DENNIS, CHARLES G. FENWICK, GEORGE A. FINCH, ROBERT LANSING, JOHN H. LATANÉ, BRECKINRIDGE LONG, LESTER H. WOOLSEY.

COMMITTEE FOR THE ADVANCEMENT OF INTERNATIONAL LAW

ELIHU ROOT, *Chairman*

JAMES BROWN SCOTT, *Secretary*

GEORGE A. FINCH, *Assistant Secretary*

SUBCOMMITTEE No. 1

To restate the established rules of international law, especially, and in the first instance, in the fields affected by the events of the recent war.

DAVID JAYNE HILL, *Chairman*

EDWIN D. DICKINSON

GEORGE A. KING

CHARLES B. ELLIOTT

HARRY SHEPARD KNAPP

CHARLES NOBLE GREGORY

ROBERT LANSING

AMOS S. HERSHEY

HAROLD S. QUIGLEY

GORDON E. SHERMAN

SUBCOMMITTEE No. 2

To formulate and agree upon the amendments and additions, if any, to the rules of international law shown to be necessary or useful by the events of the war and the changes in the conditions of international life and intercourse which have followed the war.

HARRY PRATT JUDSON, *Chairman*

EDWIN M. BORCHARD

JOHN H. LATANÉ

STERLING E. EDMUNDS

RALEIGH C. MINOR

WILLIAM I. HULL

CHARLES H. STOCKTON

HOWARD THAYER KINGSBURY

JAMES L. TRYON

ARTHUR K. KUHN

QUINCY WRIGHT

¹ Appointed by Chairman Scott by authority of the Executive Council.

SUBCOMMITTEE No. 3

To endeavor to reconcile divergent views and secure general agreement upon the rules which have been in dispute heretofore.

GEORGE GRAFTON WILSON, *Chairman*

CHANDLER P. ANDERSON

SIMEON E. BALDWIN

PERCY BORDWELL

CLEMENT L. BOUVÉ

PHILIP MARSHALL BROWN

CHARLES HENRY BUTLER

WILLIAM MILLER COLLIER

FREDERIC R. COUDERT

HENRY G. CROCKER

JOHN FOSTER DULLES

LAWRENCE B. EVANS

CHARLES CHENEY HYDE

BRECKINRIDGE LONG

FRANK C. PARTRIDGE

LESTER H. WOOLSEY

SUBCOMMITTEE No. 4

To consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted.

PAUL S. REINSCH, *Chairman*

CEPHAS D. ALLIN

FRANCIS W. AYMAR

GEORGE C. BUTTE

W. C. DENNIS

EDWARD C. ELIOT

CHARLES G. FENWICK

EDWARD A. HARRIMAN

W. R. MANNING

JAMES H. OLIVER

J. H. RALSTON

JESSE S. REEVES

ELLERY CORY STOWELL

EUGENE WAMBAUGH

THOMAS RAEBURN WHITE

FRANK H. WOOD

The only notable change in the list of officers was the resignation of the Honorable Chandler P. Anderson, Treasurer of the Society since its organization. The following remarks and motion, the latter of which was unanimously adopted, shows the appreciation felt by the Society for Mr. Anderson's services:

Mr. CHARLES HENRY BUTLER. This meeting marks an epoch in the annals of the Society. For fifteen years the financial affairs of the Society have been in the hands of the same man, who accepted the responsibilities years ago as a favor to the Society, and has continued to perform the duties of Treasurer ever since. We all know that it has not been, by any means, a sinecure and that he has devoted a large part of his time and a great deal of his strength and mentality to the affairs of this Society, and no Society has ever had a more devoted and self-sacrificing official than this Society has had in Mr. Anderson.

I, therefore, move that we tender him our sincere thanks, and an expression of appreciation of what he has done, and our regret that it is necessary that we lose his valuable services.

The Sixteenth Annual Meeting closed with a banquet at the Washington Hotel on the evening of Saturday, April 29. Dr. Harry Pratt Judson, President of the University of Chicago, presided, and the guests of honor were Chief Justice William Howard Taft, of the Supreme Court of the United States, Secretary of Labor James J. Davis, and the Honorable Henry W. Temple, a member of the House Committee on Foreign Affairs. The Chief Justice gave an interesting account of the action of the Supreme Court in suits between states; Mr. Davis touched upon international subjects, especially the immigration problem, from a point of view quite novel to international lawyers; and Mr. Temple made a scholarly address on the survival of tried methods in political development and urged the cooperation of enlightened men and women with the legislature in international matters.

The full texts of the addresses and papers, together with the verbatim report of the discussions, are being printed in the volume of annual proceedings, and will be ready for distribution within a few weeks. The volume may be obtained by members and subscribers for \$1.50.

GEORGE A. FINCH.

THE THIRTIETH CONFERENCE OF THE INTERNATIONAL LAW ASSOCIATION

The thirtieth conference of the International Law Association, of London, (founded in 1873) was held at The Hague in the Palace of Peace August 30 to September 3, 1921. The printed report of the conference has now been issued. It consists of a compact volume of 541 pages giving the proceedings in general, together with a second volume of 312 pages devoted to the proceedings of the Maritime Law Committee. There was a registered attendance of 366 members at The Hague, including many eminent names from England and the United States. Among the latter are Hollis Bailey, Esq., representing the National Conference of Commissioners on Uniform State Laws, Honorable Charles B. Elliott, Dr. C. H. Huberich, Professor Edwin R. Keedy, Dr. Arthur K. Kuhn and Honorable Everett P. Wheeler. From England a very large delegation attended, including Sir Alan Garrett Anderson, Professor Hugh H. L. Bellot, Major Norman Bentwich, Sir Graham Bower, Viscount Cave, Right Hon. Sir Henry Duke, Professor A. Pearce Higgins, Sir Norman Hill, Sir William J. Noble, George G. Phillimore, Esq., Lord Phillimore, Captain J. Bell White, Roland Vaughan Williams, Esq., K. C. and Lord Justice Younger. Maître Edouard Clunet was there from France; His Excellency Louis Franck and Gaston de Leval from Belgium. The Conference was opened by His Royal Highness, Prince Henry. Professor Dr. D. Josephus Jitta, Councillor of State of The Netherlands, President of the Association, presided.

There were innumerable social courtesies and entertainments extended to the members by The Netherlands Government, the municipality of The Hague and many important organizations and individuals, and there were

excursions to Rotterdam and Amsterdam and to Delft, the tomb of Grotius, and a special deputation was received by the Queen.

The papers were many of them devoted to suggestions as to the League of Nations or the International Court. Jonkheer Dr. B. de Jong van Beek en Donk advocated a revision of the Covenant of the League so as to provide a central council of conciliation as a permanent organ of the League.

Dr. C. J. Colombos advocated a Permanent International Prize Court to sit at The Hague and to exist as and form a part of the same system with the Court of International Justice.

Miss Sophy Sanger, of the League of Nations International Labor office, submitted an elaborate paper on "The Permanent Court of International Justice and Labour Cases," which led to a spirited debate. Lord Phillimore thought it contained suggestions that the court should decide, not upon proper principles of construction, but upon general ideas as to what ought to be the law and even a hint that it should almost wrest the law in favor of the laboring or hard-working classes. These suggestions, he insisted, tended "to be dangerous." Mr. Jelf spoke stoutly for the rights of free or non-unionist labor. He intimated that the Treaty of Versailles was made by politicians who seem hardly to have considered the rights of free labor. He asked the Association to remember its rights. Miss Sanger replied very reasonably and effectively disclaiming the meaning attributed.

Honorable Charles B. Elliott, of Minneapolis, presented a very extended paper on "The Monroe Doctrine Exception in the League of Nations Covenant." He took the ground that the American people refused to enter the League because it required them to "make a complete break with their past," that they were unwilling to give up freedom of action as to foreign affairs, and that the reservations as to the Monroe Doctrine were ambiguous and unsatisfactory.

Mr. Hollis Bailey intimated that in his opinion quite different reasons determined the course of the United States and that many persons in the United States wished their country to join the League.

Mr. J. Arthur Barratt very cogently replied saying: "We know perfectly well that Mr. Bailey does represent a considerable section of the United States who are in favor of the League of Nations, but by far the larger proportion are at present opposed to it. . . . We have also got to remember that at the last election in the United States, Mr. Harding was elected on the ground, very largely, if not almost entirely, that the policy of Mr. Wilson with reference to the League of Nations was repudiated in its existing form. Mr. Harding was elected by the largest majority of votes over his opponents that has ever been taken in the United States, so that there is no doubt whatever that the opinion of the American people, as registered in that manner, is against the existing form of the League of Nations."

"The Protection of National Minorities," was the theme of Dr. De Auer, of Budapest, and the kindred subject of "The Minorities' Rights and the

Baltic States" was the topic of Baron Heyking, late Russian Consul General in London.

Mr. William Latey, of the Middle Temple, presented a paper on "The World Court of Justice." He gave an analysis of the provisions therefor and stated what had been accomplished towards organizing and manning the court.

Dr. Arthur K. Kuhn, of New York, presented an admirable paper on "The Laws of War and the Future." He pointed out the need of codification and more effectual application, next considered the attitude of the Peace Conference and further discussed future sanctions for the laws of war. He declared in closing, "civilization cannot survive the next great war if it is to be conducted *d'outrance*." To prevent such a cataclysm the nations must cooperate, not alone to prevent war, but also to limit its destructiveness and to mitigate its cruelty."

The subject "Combatants and Non-Combatants" was treated by Sir Graham Bower and there was a variety of opinion and earnest debate.

The "Treatment of Prisoners of War" was considered, and a report by the committee thereon, Lord Justice Younger, Chairman, was received, submitting proposed regulations. It was debated and revised and finally a draft in twenty-four articles covering nine pages was agreed to. It carried out in the main the rules formulated at The Hague. It gave rise to much discussion and especially to a very interesting and instructive debate as to the distinction between military prisoners of war and civilian prisoners and persons interned in war.

Dr. Alfred Sieveking treated at length "Continuous Voyage"; Dr. G. M. W. Jellinghaus and R. S. Fraser "The Status of the Individual in International Law." Lt. Colonel Alexandre Morawski discussed "*Le Droit d'Option*," or the right of choice of nationality, and a "*Projet de Convention concernant le droit d'option par rapport aux Etats nouvellement créés*" was submitted.

The aviation section of the Association held a conference and a report was submitted of the committee appointed on the subject at the Conference of 1920. Recommendations as to limitations on night flying, after long debate and much misunderstanding, were withdrawn. A provision was recommended that "no action shall lie for trespass or nuisance by reason purely and solely of the flight of any aircraft over any property at a reasonable height"; also one making the owner and charterer of aircraft jointly and severally liable for damage caused thereby, without proof of negligence, in the absence of contributory negligence by the one damaged, and providing for the detention of the aircraft until security is given.

Mr. J. Kusters submitted an elaborate paper on "*La Reconnaissance des Effets de Jugements Etrangers*," and an "*Avant-Projet d'un Traité concernant l'Execution des Jugements Etrangers*" covering some eleven pages was presented and discussed.

It was resolved that a commission be named to consider jointly the last two topics, they being intimately connected.

Dr. Edwin Katz presented in German a paper on "Weltmarkenrecht." After debate, a cautious resolution that "international treaties establishing a world's trade mark law are to be recommended as a matter of study" was carried *nem. contra*.

Prof. Suyling of Utrecht presented a paper on "Double Taxation in the British and Dutch Income Tax Acts." He discussed the question whether to prevent double taxation the necessary sacrifice shall be made by "the State where the twice taxed income is derived from, or the State where the taxpayer resides." He suggests that the state of residence relieve the taxpayer to the extent of one half of the income derived from abroad. He shows that Great Britain and Holland have made provision to alleviate the hardship of double taxation in respect to their dominions and colonies and that this action shows that both countries feel strongly the harm caused by double taxation. He shows the burden is now so great as to be liable to weaken the energy of producers and becomes of public concern, approaching as it does to confiscation. That such alleviation as is suggested, it is hoped, may remove impediments which bar the free development of the industries of the countries involved.

A very interesting discussion followed in which the case of one who inherited from a great uncle some goods in Belgium, the title to which was in France, was cited. The double taxes exceeded one hundred per cent and the unfortunate beneficiary could not touch a centime of his succession but was found in debt to France for a certain sum.

The matter of "Multiple Taxation" was recommended for further examination by the committee.

Dr. Jitta presented a paper on "International Rules relating to the Sale of Goods," including a "Rough Draft of a Set of General Principles" in twelve subdivisions looking to remove the inconvenience of conflicting laws.

Dr. Craandijk followed with a more extended paper on the subject, and advised that a committee be appointed by the Conference to prepare and formulate international rules as to the sale of goods, and that contact with men of business and representative associations be sought in the matter. The nomination of a special committee for the above purpose was recommended by a vote.

Mr. Wyndham A. Bewes read a paper on "Contractual Capacity" contending that it ought to be governed by local law and not by that of the nation or domicile of the contractor.

Dr. Bisschop presented a paper on "International Court of Appeals in Civil Matters"; Mr. Finer one on "Comparative Public Administration"; Mr. Wolterbeek Muller on "*Rapports entres les Pouvoirs Exécutif et Judiciaire aux Pays-Bas*."

On the closing day, Mr. Hollis Bailey, of Boston, moved a resolution in

favor of the creation of a committee for preparing, approving and publishing a code of public international law, which was referred to the Executive Council.

The Maritime Law Committee

The Proceedings of the Maritime Law Committee, as has been said, fill a separate volume of 312 pages and must be mentioned as of most especial value.

The Deck Cargoes Sub-committee, as a result of some nine years of investigation and consultation with many interests, having regard to the loss of life and of property due to improper deck loading, especially deck loads of wood and timber, reported in favor of regulation.

(1) That all ships which carry deck cargoes exceeding five per cent. of their total dead weight capacity should have a certificate indicating their fitness to carry such deck cargoes.

(2) That a uniform system of issuing certificates of fitness should be adopted by the various maritime States.

(3) That with a view to arriving, if possible, at a uniform system in the various maritime States, it should be submitted to international expert opinion to decide whether, in addition to the above requirements, a uniform system of fixing a special load line and for absolute regulations restricting height and weight of deck cargoes would be desirable.

(4) That in any case the British regulations with regard to light woods can be modified with advantage.

An appendix shows at length the present state of the law of the principal maritime nations on this subject.

The Hague Rules on Affreightment

After long debate, in which ship-owners, cargo owners, lawyers, representatives of insurance companies and of chambers of commerce from many lands had contrasted and considered the various rules prevailing, draft rules to be known as "Hague Rules, 1921, defining the Risks to be assumed by Sea Carriers under a Bill of Lading" were carried unanimously. To any one examining the record of the discussion, the vast and varied knowledge represented on the committee, the earnest and laborious participation of all interests, the courageous and resolute refusal of assent until an exact expression of a just rule had been found, together with the courtesy and good temper prevailing and the reasonable and business like methods adopted, must make a profound impression. Rules so formulated are sure to carry the utmost weight with all governments. Among the recommendations adopted was that "these Rules should apply to ships owned or chartered by any Government other than ships exclusively employed in naval or military service." The discussion was without secrecy, representatives of the press were present and the results appeared instantly in the *Shipping Gazette*. The resolutions and rules are fully printed not only in English and French,

the official languages of the Conference, in the report, but also in Spanish, Italian, German, Dutch and Norwegian.

This writer is newly impressed on examining these proceedings with the practical character of the topics considered and the thorough and workman-like way in which all views are obtained, contrasted, discriminated and considered and either adopted or rejected. The Association is distinctly not inclined to be academic only. Expert knowledge is sought from property owners and shippers, from expert sailors and insurers, as well as from lawyers and judges. The differences between English and continental law are fully recognized and, in the interest of international uniformity, adjustments are sought and, in the long run, often won by unanimous agreement.

The hope expressed in the preface of the committee's report is that "The Hague Rules 1921 will . . . mark a period in a controversy of some forty years' standing and provide a useful example in the voluntary settlement of questions of universal trade by international co-operation and mutual consent."

It is an achievement worthy of the Association whose great accomplishment was theretofore "the unification of the rules of general average" known as the York-Antwerp Rules, in 1877 (revised in 1890). These rules are today incorporated in bills of lading and charter-parties the world over. May equal success and equal usefulness attend these recently formulated!

It is appropriate to mention that by resolution it was declared that "it is the sense of this Assembly that a branch be formed in the United States of America." Action has been accordingly taken. An American branch which, in its last printed report, showed 103 members, has been formed. The officers of this branch are: Honorary President, Hon. William Howard Taft; President, Hollis R. Bailey; Honorary Vice-Presidents, Rt. Hon. Sir James Aikins, Rt. Hon. Sir Robert Borden, Hon. John W. Davis, Hon. Everett P. Wheeler; Vice-President, Hon. Charles B. Elliott; Treasurer, Hamilton Vreeland, Jr.; Honorary Secretary, Arthur K. Kuhn; and Chairman of the Executive Committee, this writer.

It may be of interest to add that the Association will hold its annual conference this year at Buenos Aires in the first week of September.

CHARLES NOBLE GREGORY.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD MARCH 1—MAY 15, 1922

(With references to earlier events not previously noted.)

WITH REFERENCES

Abbreviations: *Adv. of peace*, Advocate of peace; *B. I. I. I.*, Bulletin de l'Institut Intermediaire International; *Bd. of Trade J.*, Board of Trade Journal (London); *Bundesbl.*, Switzerland, Bundesblatt; *Clunet*, Journal du droit international; *Cmd.*, Great Britain, Parliamentary papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Contemp. R.*, Contemporary Review; *Costa Rica, Ga.*, La Gaceta; *Cuba. B. O. Sec. de Estado*, Boletin Oficial de la Secretaria de Estado; *Cur. Hist.*, Current History (New York Times); *D. G.*, Diario do Governo (Portugal); *D. O.*, Diario oficial (Brasil); *Deutsch. Reichs.*, Deutscher Reichsanzeiger; *E. G.*, Eidgenossische gesetsblatt (Switzerland); *Edin. Rev.*, Edinburgh Review; *Europe*, L'Europe Nouvelle; *Evening Star* (Washington); *Figaro*, Le Figaro (Paris); *G. B. Treaty series*, Great Britain, Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gasetta Ufficiale (Italy); *Guatemalteco*, El Guatemalteco; *I. L. O. B.*, International Labor Office Bulletin; *J. O.*, Journal officiel (France); *L. N. M. S.*, League of Nations, Monthly Summary; *L. N. O. J.*, League of Nations, Official Journal; *L. N. T. S.*, League of Nations, Treaty series; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation (N. Y.)*; *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan American Union Bulletin; *Press Notice*, U. S. State Dept. Press Notice; *Proclamation*, U. S. State Dept. Proclamation; *R. G. D. I. P.*, Revue Générale de Droit International Public; *Reichs G.*, Reichs-Gesetsblatt (Germany); *Rev. int. de la Croix-Rouge*, Revue internationale de la Croix-Rouge; *Staats*, Netherlands Staatsblad; *Staatscourant*, Nederlandsche Staatscourant; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

July, 1921

- 16 BRAZIL—GREAT BRITAIN. Treaty of 1826 for abolition of slave trade, terminated. *London Ga.*, Apr. 4, 1922, p. 2717.

August, 1921

- 12 ARGENTINA—COLOMBIA. Ratifications exchanged of arbitration treaty signed Jan. 20, 1912. *P. A. U.*, April, 1922, p. 406.

September, 1921

- 27 COLOMBIA—GREAT BRITAIN. Treaty of 1851 for abolition of slave trade, terminated. *London Ga.*, Apr. 4, 1922, p. 2717.

October, 1921

- 28 LIBERIA—UNITED STATES. Agreement for a \$5,000,000 loan to Liberia signed at Washington. Text: *Nation (N. Y.)* May 31, 1922, p. 657.

November, 1921

- 15 GERMAN-SERB, CROAT, SLOVENE MIXED ARBITRAL TRIBUNAL. Rules of procedure adopted at Geneva. Text: *Reichs G.*, 1921, no. 120, p. 1660.

December, 1921

- 5 BRAZIL—ESTHONIA. Brazil recognized the independence of Esthonia. *P. A. U.*, April, 1922, p. 406.
- 10 ALBANIA. Recognized by Belgium. *Monit.*, Mar. 4, 1922, p. 1919.
- 11 CZECHOSLOVAK REPUBLIC—ITALY. Commercial and navigation treaty, signed at Rome, Mar. 23, 1921, promulgated in Italy. Text: *G. U.*, Jan. 14, 1922, p. 57.
- 15 CZECHOSLOVAK—GERMAN MIXED ARBITRAL TRIBUNAL. Rules of procedure made public. Text: *Reichs G.*, 1921, no. 115, p. 1541.
- 15 GERMAN—POLISH MIXED ARBITRAL TRIBUNAL. Rules of procedure published. Text: *Reichs G.*, 1921, no. 116, p. 1557.
- 16 BELGIUM—NETHERLANDS. Ratifications exchanged of postal convention, signed Oct. 15, 1921. Text: *Monit.*, Apr. 20, 1922, p. 3150.
- 16 LATVIA—UKRAINE. Treaty of amity and commerce, signed Aug. 3, 1921, ratified by Latvia. *Commerce repts.*, May 15, 1922, p. 442.
- 17 DANZIG—GERMANY. Ratifications exchanged, of treaty of Nov. 8, 1920 concerning options. *Reichs G.*, 1921, no. 118, p. 1607.
- 28 CHILE—COLOMBIA. Convention of June 23, 1921, concerning academic degrees and diplomas, etc., approved by Colombian law no. 60. *P. A. U.*, April, 1922, p. 406.
- 29 ECUADOR—GREAT BRITAIN. Postal money order convention, signed May 31, 1916, promulgated in Ecuador. *P. A. U.*, April, 1922, p. 407.

January, 1922

- 4 ARGENTINA—BOLIVIA. Railway agreement signed at La Paz. *P. A. U.*, April, 1922, p. 405.
- 5 NEUTRAL COMMISSION OF INVESTIGATION INTO CAUSES OF THE WAR. Preliminary meeting held at Nobel institute, Christiania, in December, and another on January 5 when constitution was adopted. *Foreign affairs*, April, 1922, p. 155.
- 6 ESTHONIA—FRANCE. Commercial agreement signed in Paris. Summary: *Bd. of trade j.*, Apr. 20, 1922, p. 425.
- 9 DENMARK—GERMANY. Agreement of July 12, 1921, concerning the transfer of the administration of justice in the ceded North Slesvig territory, promulgated in Germany. Text of agreement: *Reichs G.*, 1922, no. 6, p. 45.

January, 1922

- 14 GERMAN—ITALIAN MIXED ARBITRAL TRIBUNAL. Regulations of procedure published. Italian and German texts: *Reichs G.*, 1922, no. 10, p. 157.
- 16 BOLIVIA—COLUMBIA. General arbitration treaty of Nov. 13, 1918 ratified by Columbia. *P. A. U.*, June, 1922, p. 625.
- 19 UNITED STATES—VENEZUELA. Extradition treaty signed at Caracas. *P. A. U.*, June, 1922, p. 625.
- 20 COSTA RICA—FRANCE. Additional protocol to postal treaty of Nov. 9, 1899, signed at Paris, Dec. 15, 1921, approved in Costa Rica. *P. A. U.*, April, 1922, p. 407.
- 25 (?) CHINA—SOVIET RUSSIA. Land frontier agreement of Feb. 24, 1881 denounced by China as of Apr. 1, 1922. *Commerce repts.*, Apr. 10, 1922, p. 108.
- 31 (?) AUSTRIA—SERB, CROAT, SLOVENE STATE. Reciprocal agreement of June 27, 1920, governing commercial relations, prolonged to June 30, 1922. *Commerce repts.*, Apr. 10, 1922, p. 108.
- 31 ITALY—SOVIET RUSSIA. Preliminary agreement of Dec. 26, 1921, effective same date, promulgated in Italy. Text: *G. U.*, Mar. 14, 1922, p. 557.
- 31 ITALY—UKRAINE. Preliminary commercial agreement of Dec. 26, 1921, effective same date, promulgated in Italy. Text: *G. U.*, Mar. 14, 1922, p. 559.

February, 1922

- 1 BELGIUM—LUXEMBURG. Telegraph Convention of Dec. 27, 1921, came into force. Text: *Monit.*, Apr. 14, 1922, p. 3030.
- 4 BRAZIL—URUGUAY. Protocol signed Dec. 7, 1921, in addition to treaty for extradition of criminals, Dec. 27, 1916, ratified by Brazil. *P. A. U.*, June, 1922, p. 625.
- 9 ITALY—VENEZUELA. Ratifications exchanged of convention signed Dec. 21, 1920 for settlement of claims of Italian subjects. *P. A. U.*, June, 1922, p. 625.
- 11 ARGENTINA—URUGUAY. Convention of Apr. 11, 1918, concerning the triangulation of the Uruguay river, promulgated by Uruguay. Text: *D. O. (Uruguay)* Feb. 16, 1922, p. 287.
- 11 RUSSIAN SOVIET CONGRESS. Resolutions on the international situation and economic policy of Russia adopted at 9th Congress of the Soviets. Text: *Europe*, Feb. 11, 1922, p. 182.
- 14 (?) AUSTRIA—SOVIET RUSSIA. Trade agreement of Dec. 7, 1921, ratified by Soviet Russia. *Commerce repts.*, Apr. 10, 1922, p. 108.

February, 1922

- 16 FRANCE—HUNGARY. Delay provided in convention of Jan. 31, 1921, regarding paragraph e of Art. 231 of Trianon treaty, extended for six months by exchange of notes. *Bib. de la France*, Mar. 31, 1922, no. 13, *Chronique*.
- 18 BELGIUM—NETHERLANDS. Workmen's compensation convention signed Feb. 9, 1921 promulgated in Holland. French and Dutch texts: *Staats.*, 1922, no. 70, p. 5.
- 23 BULGARIA—SPAIN. By an exchange of notes Spain is granted most-favored nation treatment, and Bulgaria receives tariff benefits. *Commerce repts.*, Apr. 24, 1922, p. 245; *Ga. de Madrid*, Mar. 24, 1922, p. 1222.
- 24 BRAZIL—PARAGUAY. Treaty for extradition of criminals signed in Asuncion. *P. A. U.*, June, 1922, p. 624.

March, 1922

- 1 COLOMBIA—UNITED STATES. Ratifications exchanged at Bogotá of treaty signed Apr. 6, 1914. *U. S. Treaty ser.*, no. 661.
- 1 SOVIET RUSSIA—SWEDEN. Preliminary commercial agreement signed at Stockholm on March 1. Swedish Parliamentary Commission advised unfavorably on its ratification on Mar. 31. *Cur. Hist.*, May, 1922, v. 16: 352. Text: *Russian information*, May 1, 1922, p. 355.
- 1-16 EGYPT. Sarwat Pasha took over Premiership and formed cabinet on March 1. A rescript issued by the Sultan on Mar. 15 announced that Egypt had become an independent state. Proclamation of the Sultan as King took place on Mar. 16. *Times*, Mar. 7, 1922, p. 11; *Cur. Hist.*, April, 1922, v. 15: 163.
- 3 GREAT BRITAIN. Treaties of peace orders (amendment) orders 1919-1922 issued. *Lond. Ga.*, Mar. 7, 1922, p. 1927.
- 4 CHINA—UNITED STATES. President Harding issued proclamation forbidding shipment of arms to China. *Wash. Post*, Mar. 7, 1922, p. 1. Text: *Proclamation*, no. 1621.
- 6 BELGIUM—LUXEMBURG. Ratifications exchanged of convention of July 25, 1921, establishing an economic union, effective April 1. *Bd. of trade j.*, Mar. 23, 1922, p. 315. Text: *Monit.*, Mar. 11, 1922, p. 2153.
- 6 INTERNATIONAL COMMUNICATIONS CONFERENCE. Committee no. 1 of Preliminary Conference met at Department of State. *Press notice*, Mar. 6, 1922.
- 6 to May 15 GENOA CONFERENCE. Invitation of Italian government declined by Secretary Hughes on Mar. 8. Text: *Wash. Post*, Mar. 9,

March, 1922

1922, p. 1; *Times*, Mar. 10, 1922, p. 11. On March 15 Chicherin sent memorandum to Allied Powers stating conditions under which Russia would participate in the Conference, and on March 30, a second memorandum regarding juridical measures taken by Soviet government with respect to encouragement of private initiative and professional activity. Texts: *Europe*, Apr. 8, 1922, p. 441. On March 21, Allied technical experts on program of Conference, met in London. *Wash. Post*, Mar. 22, 1922, p. 1. On April 10, the Conference opened in Genoa with delegates from 34 states in attendance. Premier Facta of Italy was chosen President. Commissions on Finance, Commerce, and Transport were appointed. *Cur. Hist.*, May, 1922, v. 16: 316. On April 11 the report of the Allied experts in London, with proposals, was submitted. Text: *Europe*, Apr. 22, 1922, p. 499. On Apr. 15, Litvinoff presented counter claims in the debt question; the British plan for a peace pact in Europe was stated, and Allied terms were offered to Russia. Text: On April 17, the treaty of Rapallo, signed by Germany and Russia on April 16, was published and the German delegation issued two commoniqués regarding it. Texts: On April 18, Allied note of protest against treaty was sent to German Chancellor. Text: On April 21, the German delegation replied to the Allied note regarding the treaty and Russia replied to Allied terms of April 15. Texts: On April 22, the Allies agreed upon a second protest to Germany which was addressed to Chancellor Wirth on April 23. Text: On April 24, M. Rakowski sent note to Allies on Russian debt regulation with a demand for a loan and diplomatic recognition. Text: *Europe*, Apr. 29, 1922, p. 528. On May 2, Allied proposal on reconstruction of Russia was sent to Russian delegation, lacking signature of the Belgians and carrying a reservation of the French. *Wash. Post*, May 3, 1922, p. 1. On May 5, the Economic Commission ended its work. Text of resolutions: *Temps*, May 7, 1922, p. 2. On May 8, Russian delegation issued statement. Text: *Wash. Post*, May 9, 1922, p. 4. On May 11, Russians replied to Allied memorandum. Text: *N. Y. Times*, May 12, 1922, p. 1. On May 12 hope of reaching economic agreement with Soviet Russia, or of making a ten-year non-aggression pact, was abandoned. *N. Y. Times*, May 13, 1922, p. 1. On May 14, an agreement was reached for a meeting at The Hague on June 26 to continue the discussion of Russian affairs, with a preliminary meeting of experts on June 15. A special invitation to the United States to participate was declined by Secretary Hughes on May 15. Text: *Cur. Hist.*, June, 1922, v. 16: 497, 544.

March, 1922

- 6 **SANTO DOMINGO.** Military Governor issued proclamation withdrawing and annulling the proclamations of Dec. 23, 1920 and June 14, 1921, and announcing that military government would continue to operate in accordance with the Proclamation of Nov. 29, 1916. *Nation* (N. Y.) Apr. 19, 1922, p. 480.
- 7 (?) **DANZIG—GERMANY—POLAND.** Convention of Apr. 21, 1921, regulating rail and water communications, ratified by Poland. *Temps*, Mar. 9, 1922, p. 2.
- 7 **INDIA.** Lord Reading, viceroy of India, sent appeal to British government for revision of Treaty of Sèvres, the evacuation of Constantinople, sovereignty of the Sultan over holy places, restoration of the Turk in Thrace, etc. Text: On Mar. 9, Lloyd George demanded resignation of Montague, Secretary for India, who had published the appeal. On Mar. 10, Gandhi, leader of non-cooperation movement in India, was arrested. On Mar. 18 he was sentenced to six years' imprisonment. *Cur. Hist.*, April, 1922, v. 16: I.
- 7 **INTERALLIED REPARATIONS COMMISSION.** Issued report showing German payments in cash and in kind and cessions of state property to Dec. 31, 1921. Summary: *Wash. Post*, Mar. 8, 1922, p. 9.
- 7 **PERU—URUGUAY.** Treaty providing for general arbitration, signed July 18, 1917, ratifications exchanged Feb. 15, 1922, promulgated in Uruguay. *D. O. (Uruguay)* Mar. 11, 1922, p. 447.
- 8 to April 1 **IRISH FREE STATE (AGREEMENT) BILL.** Passed by British House of Commons on Mar. 8 and by House of Lords on Mar. 27. *Times*, Mar. 9 and 28, 1922, p. 17. On Mar. 31, King George gave his assent to the Bill. *Times*, Apr. 1, 1922, p. 17. On April 1 the Provisional Government (Transfer of Functions) order, (Council of Ireland) order and other orders were promulgated. *Lond. Ga.*, Apr. 4, 1922, p. 2705.
- 9-12 **BELGRADE ECONOMIC CONFERENCE.** Representatives of Yugoslavia, Czechoslovakia, Rumania and Poland discussed concerted action at Genoa conference. *Europe*, Mar. 25, 1922, p. 364; *Cur. Hist.*, May, 1922, v. 16: 358. Text of official communiqué: *Times*, Mar. 16, 1922, p. 11.
- 9 to April 14 **HUNGARIAN REPARATIONS.** Reparations Commission notified Hungarian government to make certain deliveries of live-stock before the end of May, under terms of Treaty of Trianon. *Times*, May 22, 1922, p. 9. On April 14 (?) Hungary sent memorandum to Reparations commission relative to execution of art. 181 of Treaty of Trianon. Summary: *Temps*, Apr. 16, 1922, p. 2.

March, 1922

10 to April 11 RHINE OCCUPATION PAYMENTS. Through R. W. Boyden, American unofficial member of Reparations Commission, Secretary Hughes presented demand to Allied Finance Ministers in Paris for settlement of claim of \$241,000,000, of the American government for the cost of American Army of Occupation. *N. Y. Times*, Mar. 11, 1922, p. 1. On March 14, reply of Finance Ministers advised American government to address itself directly to the Allied governments. Summary: *N. Y. Times*, Mar. 15, 1922, p. 1. On Mar. 20, Secretary Hughes sent identic notes to the British, French, Belgian, Italian and Japanese Foreign Offices demanding equal footing with Allies in German fund. Text: *N. Y. Times*, Mar. 23, 1922, p. 1. Supplementary identic notes were sent by Secretary Hughes to Allied powers on March 22, to meet objection that France has not been paid in full. Text: *N. Y. Times*, Mar. 26, 1922, p. 3. French reply, through Ambassador Herrick, admitting validity of claim, received at State Department on Mar. 31. Text: *N. Y. Times*, Apr. 2, 1922, p. 7. British and Belgian replies accepting claim of American government made public on April 11. Texts: *N. Y. Times*, Apr. 12, 1922, p. 16.

11 to May 10 GERMAN REPARATIONS. Conference of Allied Finance Ministers at Paris resulted in agreement on Mar. 11 concerning apportionment of German payments. Text: *Temps.*, Mar. 17, 1922, p. 1; *Europe*, Apr. 1, 1922, p. 405. On Mar. 21 the Reparations Commission sent letter to M. Wirth with text of its decision fixing its demands upon Germany for 1922 and granting a provisional moratorium until May 31. Text: *Europe*, Apr. 1, 1922, p. 408; *Cur. Hist.*, May, 1922, v. 16: 206. On Apr. 7 the German government rejected principal conditions imposed by Reparations Commission. Text: On Apr. 13 the Commission sent new note to Chancellor Wirth stating that definite decision would be delayed until May 31. Text: *Europe*, Apr. 29, 1922, p. 535; *Cur. Hist.*, May, 1922, v. 16: 209. German reply of May 10 to Reparations note of Apr. 13 reaffirmed inability to meet demands. *Wash. Post*, May 11, 1922, p. 1.

13-19 BALTIC STATES CONFERENCE (WARSAW). Representatives of Estonia, Finland, Latvia and Poland met at Warsaw, to determine on a common policy at Genoa. *Temps.*, Mar. 15, 1922, p. 2, 6. Program: *Temps.*, Mar. 16, 1922, p. 2. On March 17 a treaty on a five year basis was signed by all four powers concerning arbitration, boundaries, new treaties and agreements, etc. Text: *Temps.*, Apr. 2, 1922, p. 2; *Europe*, Apr. 8, 1922, p. 435; *Cur. Hist.*, May-June, 1922, v. 16: 355, 471.

March, 1922

- 15 AUSTRIA—CZECHOSLOVAK REPUBLIC. Ratifications exchanged of treaty [signed at Lana, near Prague, Dec. 16, 1921] *Temps*, Mar. 18, 1922, p. 2.
- 15 FRANCE—GERMANY. Agreement concerning reparations signed at Berlin. *Temps*, Mar. 25, 1922, p. 4.
- 15-16 GERMAN DISARMAMENT. German note sent to General Nollet on Mar. 15 agreed to gradual reformation in Security Police along certain lines. Summary: On Mar. 16, the Allied Ambassadors in Berlin sent joint note to German government on delays in disarmament, surrender of documents, etc. *Times*, Mar. 17 and 18, 1922, p. 11 and 9.
- 16 FIUME. Italian government ordered military occupation of Fiume following seizure of the city by the Fascisti and flight of President Zanelli and 49 members of Constituent Assembly. *N. Y. Times*, Mar. 18, 1922, p. 6; *Cur. Hist.*, May, 1922, v. 16: 352.
- 16 (?) GREAT BRITAIN—UNITED STATES. Secretary Hughes sent note to British government in behalf of open-door and equality of opportunity for American interests in Mesopotamia. *N. Y. Times*, Mar. 18, 1922, p. 3.
- 18 NEUTRAL NATIONS CONFERENCE. Representatives of Denmark, Norway, Holland, Spain, Sweden and Switzerland, met in Stockholm to discuss questions to be considered at Genoa. *Temps*, Mar. 21, 1922, p. 1; *Cur. Hist.*, May, 1922; v. 16: 352.
- 20-28 EUROPEAN HEALTH CONFERENCE. Held at Warsaw under auspices of the League of Nations. *Temps*, Mar. 22 and 30, 1922, p. 2, 6. Resolutions: *L. N. Communiqué au Conseil.*, C. 177, M. 96, 1922.
- 22 to April 15 NEAR EAST (GRECO-TURKISH PROBLEM). Foreign Ministers of England, France and Italy met in Paris on March 22 to discuss Greco-Turkish problem and demands of Turkish Nationalists for revision of the Treaty of Sèvres. On Mar. 23, proposals for an armistice of three months were sent to Greek government at Athens and to Turkish governments at Angora and Constantinople. On March 25, the Greek government accepted proposal with reservations. On March 26, the conference closed with signing of provisional terms for revision of Sèvres treaty. Summary: On April 5, Angora's acceptance of armistice proposals with reservation regarding Anatolia was announced. *Cur. Hist.*, May, 1922, v. 16: 211. On April 8, Constantinople's acceptance, with reservation regarding Thrace, was handed to Allied High Commissioners. *N. Y. Times*, April 9, 1922, p. 21. On April 15, Allied High Commissioners sent reply to Angora refusing to evacuate Anatolia. *Wash. Post*, April 16, 1922, p. 3; *Times*, Apr. 17, 1922, p. 9.

March, 1922

- 22 PARAGUAY—UNITED STATES. Ratifications of commercial travelers' convention of Oct. 20, 1919, exchanged. *U. S. Treaty ser.*, no. 662.
- 24 FRANCE—SERBIA. Convention for the education of Serbs in France, signed at Corfu, Nov. 9, 1916, promulgated in France. *J. O.*, Mar. 26, 1922, p. 3302.
- 24 FRANCE—SERBIA. Convention signed at Paris, Nov. 27, 1917, for the admission of Serbs to professional and technical schools, promulgated in France. *J. O.*, Mar. 26, 1922, p. 3302.
- 24-28 LEAGUE OF NATIONS. *Council*. Extraordinary session (17th meeting) held in Paris. *Proceedings: L. N. O. J.*, May, 1922.
- 24 to May 5 LITHUANIA—POLAND. Union of Vilna with Poland authorized by Polish Parliament on Mar. 24. *Cur. Hist.*, May, 1922, v. 16: 354. On Mar. 26 Poland declined Lithuania's proposal to submit Vilna controversy to Hague Court of International Justice. *N. Y. Times*, Mar. 27, 1922, p. 17. On Apr. 18 the act of transfer of Vilna to Poland was signed by Polish Premier and President of Provisional Commission at Vilna, and powers transferred to Poland. *Temps*, Apr. 20, 1922, p. 2. On May 5 the Vilna question was presented to the Genoa conference by the Lithuanian delegation. *Nation (N. Y.)* May 24, 1922, p. 634.
- 25 COLOMBIA—VENEZUELA. Swiss Federal Council, arbitrator in boundary dispute, reached decision. *Evening Star*, Mar. 28, 1922, p. 16; *N. Y. Times*, Mar. 29, 1922, p. 4.
- 27 ALBANIA—SERB, CROAT, SLOVENE STATE. Albanian government recognized *de jure* by Jugoslavia. *L. N. O. J.*, May, 1922, p. 435.
- 28 GERMANY—LATVIA. Commercial treaty signed at Berlin providing limited "most-favored nation treatment." *Commerce repts.*, May 29, 1922, p. 575.
- 28-30 BALTIC STATES CONFERENCE (RIGA). Representatives of Esthonia Latvia, Poland and Soviet Russia met at Riga on Mar. 28. On Mar. 30, a "Protocole de cloture" was signed for promotion of economic and political cooperation. Text: *Europe*, Apr. 8, 1922 p. 436; *Nation (N. Y.)* May 10, 1922, p. 577; *Cur. Hist.*, May, 1922 v. 16: 356.
- 29 CHINA—JAPAN. Agreement concluded at Peking for removal of Japanese guards along the Shantung railway. *Evening Star*, Mar. 29, 1922.
- 29 FRANCE—SWITZERLAND. Agreement of Aug. 7, 1921, relating to free zones, ratified by Switzerland. Text: *Bundesbl.*, Apr. 12, 1922, no. 15, p. 595.

March, 1922

- 29 LEAGUE OF NATIONS. Committee on Communications and Transit. Second session opened in Geneva. *L. N. M. S.*, Mar. 1922, p. 57.
- 30 IRISH PEACE TREATY. Representatives of British, Northern Ireland and Southern Provisional governments signed a compact of peace. Summary: *Times*, Mar. 31, 1922, p. 12. Text: *Cur. Hist.*, May, 1922, v. 16: 343.
- 31 WASHINGTON ARMS CONFERENCE TREATIES. Notes sent by the State Department to American diplomatic officials in Great Britain, France, Italy, Belgium, Japan, China, Portugal, Netherlands, announcing ratification of treaties. *Wash. Post*, Apr. 1, 1922, p. 4.

April, 1922

- 1 PORTUGAL—SOUTH AFRICA (Union) Convention regulating commercial reports and native workmen denounced. *Temps*, Apr. 7, 1922, p. 2.
- 2 GUATEMALA—HONDURAS. Guatemala recognized by Honduras. *Guatemalteco*, Apr. 10, 1922, p. 345.
- 3 GERMANY—SOVIET RUSSIA. Reported military convention concluded in Berlin on April 3. Published version: *Times*, May 6 and 15, 1922, p. 9.
- 4 BULGARIAN REPARATIONS. Inter-allied Reparations commission informed Bulgaria how much it would have to pay. *Times*, Apr. 5, 1922, p. 11.
- 7 CHINA—RUSSIA. Customs agreement of 1881 abrogated by China. *Cur. Hist.*, May, 1922, v. 16: 359.
- 8-9 FAR EASTERN REPUBLIC—JAPAN. Conference held at Dairen resulted in acceptance of Japan's ultimatum by Chita government. Summary of agreement: *Cur. Hist.*, May, 1922, v. 16: 360.
- 8 LITTLE ENTENTE CONFERENCE. Conference in Rome of representatives of states formed from former Austro-Hungarian empire closed after concluding forty international conventions dealing with national debts, pensions, debit and credit accounts between citizens of the various states, etc. *N. Y. Times*, Apr. 9, 1922, p. 20.
- 9 BESSARABIA—RUMANIA. Act of union ratified by Rumanian Senate and Chamber of Deputies. *Temps*. Apr. 6 and 11, 1922, p. 1.
- 9 to May 4 SHANTUNG. Evacuation of Japanese troops along the Tsingtao-Tsinan railway began on April 9 and was completed on May 4. *Cur. Hist.*, June, 1922, v. 16: 528.
- 10 (?) CROATIA. Memorial protesting against Serbian domination in the Serb, Croat, Slovene State, adopted by 63 Deputies of the Croatian

April, 1922

- bloc on Jan. 14, was sent to Genoa conference. Text: *N. Y. Times*, May 14, 1922, p. 7.
- 12 DENMARK—GERMANY. Negotiations for retrocession of North Slesvig concluded. Various agreements made since May 23, 1921 will be appended as annexes to the treaty. *Times*, Apr. 13, 1922, p. 11.
- 15 CZECHOSLOVAK REPUBLIC—ITALY. Commercial treaty of March 23, 1921, prolonged for one year. *Ga. de Prague*, May 17, 1922, p. 3.
- 15 GUATEMALA—UNITED STATES. Guatemala recognized by the United States. *Wash. Post*, Apr. 16, 1922, p. 8; *Guatemalteco*, Apr. 19, 1922, p. 374.
- 15 (?) ITALY—SPAIN. Commercial modus-vivendi established by exchange of notes. *Temps*, Apr. 19, 1922, p. 1. Text: *Ga. de Madrid*, Apr. 18, 1922, p. 221. Summary: *Bd. of trade j.*, May 11, 1922, p. 515.
- 16 GERMANY—SOVIET RUSSIA. Political treaty signed at Rapallo by which Germany recognized the Soviet government *de jure*: German claims in respect to private property nationalized by Bolsheviks were waived; German and Russian debts were mutually cancelled, diplomatic relations were renewed, etc. Text: *Temps*, Apr. 19, 1922, p. 1. Summary: *Wash. Post*, Apr. 18, 1922, p. 4; Text: *Cur. Hist.* June, 1922, v. 16: 452.
- 20 GREAT BRITAIN—HUNGARY. Ratifications exchanged of agreement respecting settlement of enemy debts, signed Dec. 20, 1921. *G. B. Treaty series*, 1922, no. 4.
- 20 GREAT BRITAIN—SIAM. Ratifications exchanged of convention respecting settlement of enemy debts, signed Dec. 20, 1921. *G. B. Treaty series*, 1922, no. 3.
- 21 (?) FAR EASTERN REPUBLIC—SOVIET RUSSIA. Economic treaty concluded. *N. Y. Times*, Apr. 23, 1922, II, p. 7.
- 21 GREAT BRITAIN—HUNGARY. Copyright convention of 1893 (revoked as from Aug. 12, 1914) again put into force, subject to certain modifications. *Lond. Ga.*, Apr. 28, 1922, p. 3318.
- 22 FINLAND—GERMANY. Economic agreement concluded at Berlin. *Temps*, Apr. 24, 1922, p. 2.
- 23 BALTIC STATES —POLAND. Esthonian Parliament ratified the political agreement signed Mar. 17, 1922. *Temps*, Apr. 24, 1922, p. 1.
- 23 GUATEMALA—SALVADOR. Guatemala recognized by Salvador. *Wash. Post*, Apr. 24, 1922, p. 2.

April, 1922

- 24 ITALY—TURKEY. Agreement concluded concerning concessions for railways, mines and public works in Asia Minor. *Evening Star*, May 4, 1922; *Times*, May 5, 1922, p. 9.
- 25 (?) FRANCE—GUATEMALA. France recognized government of Guatemala. *Guatemalteco*, Apr. 27, 1922, p. 413.
- 26 EGYPT—UNITED STATES. New Egyptian government recognized by the United States, which maintains capitulatory rights. *Wash. Post*, Apr. 27, 1922, p. 1.
- 27-29 AMERICAN SOCIETY OF INTERNATIONAL LAW. Held 16th annual meeting in Washington. *Wash. Post*, Apr. 28-30, 1922.

May, 1922

- 2 RUSSIAN CONSORTIUM. Announced at Genoa that 13 nations had subscribed 20,000,000 pounds capital to an international corporation for starting business in Russia. *N. Y. Times*, May 3, 1922, p. 6.
- 3 AUSTRIA—UNITED STATES. Revival of extradition convention of July 3, 1856 and Copyright convention of Jan. 30, 1912, approved by U. S. Senate. *Cong. rec.*, May 3, 1922, p. 6813.
- 3 HUNGARY—UNITED STATES. Revival of extradition convention of July 3, 1856 and copyright convention of Jan. 30, 1912, approved by U. S. Senate. *Cong. rec.*, May 3, 1922, p. 6813.
- 4 MOORE, JOHN BASSETT. Appointed to represent the United States on the Commission of jurists on the laws of war, authorized in Resolution no. 1. of Arms Conference. *Wash. Post*, May 5, 1922, p. 11.
- 5 BRAZIL—GERMANY. Commercial agreement concluded at Berlin (?) *Wash. Post*, May 7, 1922, p. 1.
- 6 (?) CHINA—JAPAN. Treaty relating to Shantung, signed at Washington, Feb. 6, 1922, ratified by China. *Wash. Post*, May 7, 1922, p. 1.
- 7 (?) GERMANY—UNITED STATES. Secretary Hughes notified Germany that the patent convention of 1909 has been revived, effective May 8. *Wash. Post*, May 8, 1922, p. 6; *Commerce repts.*, May 22, 1922, p. 511.
- 8 INTERNATIONAL INSTITUTE OF AGRICULTURE. Sixth assembly opened in Rome. *Wash. Post*, May 9, 1922, p. 6.
- 9 (?) GERMANY—ITALY. Agreement concluded at Genoa for settlement of questions concerning German workmen in Italy and Italians in Germany. *Temps*, May 11, 1922, p. 4.
- 9 (?) GREAT BRITAIN—UNITED STATES. Agreement reached in regard to Palestine mandate, which will be embodied in a treaty. *Times*, May 11, 1922, p. 10; *N. Y. Times*, May 10, 1922, p. 1.

May, 1922

- 9 IRAK (MESOPOTAMIA). Representatives of King Feisal presented a memorandum to Genoa conference claiming independence for Syria and Lebanon and protesting against French occupation. *Cur. Hist.*, June, 1922, v. 16: 539; *Wash. Post*, May 10, 1922, p. 4.
- 10 LIBERIA—UNITED STATES. Resolution authorizing loan of \$5,000,000 to Liberia, provided for in agreement of Oct. 28, 1921, agreed to in the House of Representatives. *Cong. Rec.*, May 10, 1922, p. 7307.
- 11 BELGIUM—FRANCE. Convention of Oct. 25, 1921, concerning reparations regulations, promulgated in France. *J. O.*, May 12, 1922, p. 4886.
- 11 BELGIUM—FRANCE. Convention of Feb. 14, 1921, guaranteeing to miners the benefit of pension systems, promulgated in France. *J. O.*, May 12, 1922, p. 4886.
- 11 CZECHOSLOVAK REPUBLIC—GERMANY. Treaty relating to judicial assistance and extradition procedure, signed at Prague. *Temps*, May 13, 1922, p. 1; *Ga. de Prague*, May 13, 1922, p. 2.
- 11 DENMARK—GERMANY. Danish Chambers of Parliament adopted treaties concluded on April 12 for establishment of new frontier and various questions arising therefrom. *Temps*, May 13, 1922, p. 3.
- 11-12 LEAGUE OF NATIONS COUNCIL. 18th meeting held in Geneva. Decisions reached to establish a South American Bureau at Geneva, and to throw open the Permanent Court of International Justice to Russia, Germany, Turkey, Hungary and Mexico. *N. Y. Times*, May 12-13, 1922, p. 19 and 5.
- 12 ITALY—POLAND. Commercial treaty signed at Genoa. *Wash. Post*, May 13, 1922, p. 4.
- 13 ALBANIA. League of Nations Council decided upon a protectorate for Albania. *N. Y. Times*, May 14, 1922, p. 7.
- 15 CHILE—PERU. Conference on Tacna-Arica dispute opened in Washington. *Wash. Post*, May 16, 1922, p. 3.
- 15 GERMANY—POLAND. Economic treaty, settling Upper Silesian question, signed at Geneva. *N. Y. Times*, May 16, 1922, p. 18; *Temps*, May 17, 1922, p. 2.
- 15 LEAGUE OF NATIONS. Committee on Intellectual Cooperation. Selected by League Council to study and suggest methods of intellectual cooperation throughout the world. *N. Y. Times*, May 16, 1922, p. 18.
- 15 SPAIN—SWITZERLAND. Commercial convention signed at Berne. *Bd. of trade j.*, May 25, 1922, p. 582.

INTERNATIONAL CONVENTIONS

AALAND ISLANDS. Geneva, Oct. 20, 1921.

Ratification:

Denmark.

Finland.

France.

Germany.

Great Britain.

Sweden. April 6, 1922. *L. N. M. S.*, April, 1922, p. 73.

BULGARIAN PEACE TREATY. Neuilly-sur-Seine, Nov. 27, 1919.

Ratification:

Italy. Aug. 9, 1920; promulgated Jan. 15, 1922. *G. U.*, Feb. 9, 1922, p. 254.

CHINESE CUSTOMS TARIFF. Washington, Feb. 6, 1922.

Ratification:

China. *Wash. Post*, May 7, 1922, p. 1.

United States. Mar. 30, 1922. *Cong. Rec.*, Mar. 30, 1922, p. 5223.

CONVENTIONS: (1) COLLISIONS; (2) SALVAGE AT SEA. BRUSSELS, Sept. 23, 1910.

Adhesion:

Argentina. Mar. 15, 1922. *Monit.*, Mar. 24, 1922, p. 2478.

COPYRIGHT UNION. Revision, Berlin, Nov. 13, 1908. Protocol, Berne, Mar. 20, 1914.

Adhesion:

Hungary. Feb. 14, 1922. *E. G.*, Mar. 8, 1922, p. 286; *Monit.*, Mar. 22, 1922, p. 2428.

Ratification:

Brazil. Feb. 9, 1922. *E. G.*, Mar. 15, 1922, p. 297.

CUSTOMS TARIFFS PUBLICATION. Brussels, July 5, 1890.

Adhesion:

Latvia. Feb. 24, 1922. *Ga. de Madrid*, Mar. 3, 1922, p. 950; *Monit.*, Feb. 25, 1922, p. 1685.

EIGHT HOUR DAY. Washington, Nov. 28, 1919.

Ratification:

Bulgaria. Nov. 22, 1921. *I. L. O. B.*, Mar. 15, 1922, p. 170.

EMPLOYMENT OF CHILDREN IN INDUSTRY. Washington, Nov. 28, 1919.

Ratification:

Bulgaria. Nov. 22, 1921. *I. L. O. B.*, Mar. 15, 1922, p. 170.

GENEVA CONVENTION. Aug. 22, 1864. Revisions.

Adhesion:

Afghanistan. Mar. 23, 1922. *Ga. de Madrid*, Apr. 27, 1922, p. 348.

Latvia. Apr. 1, 1922. *E. G.*, Apr. 19, 1922, p. 329.

HUNGARIAN PEACE TREATY. Trianon, June 4, 1920.*Ratification:*

Cuba. Mar. 21, 1922. *J. O.*, Mar. 26, 1922, p. 3302.

Italy. July 26, 1921; promulgated Jan. 15, 1922. *G. U.*, Feb. 9, 1922, p. 253.

LEAGUE OF NATIONS. Covenant. Protocols of Amendments.*Ratification:*

Norway. *L. N. M. S.*, March, 1922, p. 49.

Signatures:

Czechoslovak Republic.

Greece. March, 1922.

Sweden. (Art. 4, 6, 12, 13, 15, 16, 26) *L. N. M. S.*, March, 1922, p. 49.

LETTERS, ETC., OF DECLARED VALUE. Madrid, Nov. 30, 1920.*Adhesion:*

Albania. *E. G.*, Mar. 8, 1922, p. 286; *Ga. de Madrid*, Mar. 29, 1922, p. 1292.

Promulgation:

Italy. Dec. 30, 1921. *G. U.*, Jan. 3, 1922, p. 5.

LIQUOR TRAFFIC IN AFRICA. Saint Germain-en-Laye, Sept. 10, 1919.*Ratification:*

Japan. Apr. 6, 1922. *J. O.*, Apr. 9, 1922, p. 3846.

MARRIAGE. The Hague, July 17, 1905.*Denunciation:*

Belgium (effective Aug. 24, 1922). *Monit.*, Mar. 10, 1922, p. 2130.

MATERNITY CONVENTION. Washington, Nov. 28, 1919.*Promulgation:*

Italy. Apr. 6, 1922. *I. L. O. B.*, May 3, 1922, p. 305; *G. U.*, Apr. 18, 1922, p. 895.

Ratification:

Bulgaria. Nov. 22, 1921. *I. L. O. B.*, Mar. 15, 1922, p. 170.

Italy. Mar. 31, 1922. *I. L. O. B.*, Apr. 12, 1922, p. 236.

MONEY ORDERS. Madrid, Nov. 30, 1920.*Adhesion:*

Albania. *E. G.*, Mar. 8, 1922, p. 286; *Ga. de Madrid*, Mar. 29, 1922, p. 1292.

Promulgation:

Italy. Dec. 30, 1921. *G. U.*, Jan. 3, 1922, p. 5.

NAVAL LIMITATION TREATY. Washington, Feb. 6, 1922.*Ratification:*

United States. Mar. 29, 1922. *Cong. Rec.*, Mar. 29, 1922, p. 5152.

NIGHT WORK OF WOMEN. Washington, Nov. 28, 1919.

Promulgation:

Italy. Apr. 6, 1922. *I. L. O. B.*, May 3, 1922, p. 305; *G. U.*, Apr. 18, 1922, p. 895.

Ratification:

Bulgaria. Nov. 22, 1921. *I. L. O. B.*, Mar. 15, 1922, p. 170.

Italy. Mar. 31, 1922. *I. L. O. B.*, Apr. 12, 1922, p. 236.

NIGHT WORK OF YOUNG PERSONS. Washington, Nov. 28, 1919.

Promulgation:

Italy. Apr. 6, 1922. *I. L. O. B.*, May 3, 1922, p. 305; *G. U.*, Apr. 18, 1922, p. 895.

Ratification:

Bulgaria. Nov. 22, 1921. *I. L. O. B.*, Mar. 15, 1922, p. 170.

Italy. Mar. 31, 1922. *I. L. O. B.*, Apr. 12, 1922, p. 236.

OPEN-DOOR (INTEGRITY OF CHINA). Washington, Feb. 6, 1922.

Ratification:

China. *Wash. Post*, May 7, 1922, p. 1.

United States. March 30, 1922. *Cong. Rec.*, Mar. 30, 1922, p. 5216.

OPIUM CONVENTION, 2D. The Hague, Jan. 23, 1912.

Promulgation:

Italy. Feb. 9, 1922. *G. U.*, Mar. 28, 1922, p. 669.

PACIFIC POSSESSIONS TREATY. Washington, Dec. 13, 1921.

Ratification:

United States. Mar. 24, 1922. *Cong. Rec.*, Mar. 24, 1922, p. 4904.

PACIFIC POSSESSIONS TREATY. Supplement. Washington, Feb. 6, 1922.

Ratification:

United States. Mar. 27, 1922. *Cong. Rec.*, Mar. 27, 1922, p. 5054.

PARCEL POST CONVENTION. Madrid, Nov. 30, 1920.

Adhesion:

Albania. *E. G.*, Mar. 8, 1922, p. 286; *Ga. de Madrid*, Mar. 29, 1922, p. 1292.

Promulgation:

Italy. Dec. 30, 1921. *G. U.*, Jan. 3, 1922, p. 5.

Ratification:

Dominican Republic. *P. A. U.*, April, 1922, p. 407.

PERMANENT COURT OF INTERNATIONAL JUSTICE. Optional clause, Geneva, Dec. 16, 1920.

Ratification:

Lithuania. Feb. 14, 1922. *L. N. M. S.*, March, 1922, p. 48.

Signature:

Austria. Mar. 14, 1922. *L. N. O. J.*, May, 1922, p. 425.

PERMANENT COURT OF INTERNATIONAL JUSTICE. Protocol of Signature.
Geneva, Dec. 16, 1920.

Promulgation:

France. Apr. 12, 1922. *J. O.*, Apr. 22, 1922, p. 4166.

Ratification:

Cuba. Jan. 12, 1922. *L. N. O. J.*, March, 1922, p. 203.

France. July 22, 1921. *J. O.*, Apr. 22, 1922, p. 4167.

Lithuania. Feb. 14, 1922. *L. N. M. S.*, March, 1922, p. 48.

Siam. Feb. 24, 1922. *L. N. O. J.*, April, 1922, p. 305.

Signature:

Latvia. Jan. 21, 1922. *L. N. O. J.*, March, 1922, p. 203.

POSTAL CONVENTION. Madrid, Nov. 13, 1920.

Ratification:

Argentina. *Commerce repts.*, Apr. 24, 1922, p. 249.

Colombia.

Dominican Republic.

Ecuador.

Peru. *Ga. de Madrid*, Mar. 15, 1922, p. 1119.

POSTAL CONVENTION. Portorose, Nov. 23, 1921.

Promulgation:

Italy. Feb. 1, 1922. *G. U.*, Feb. 28, 1922, p. 442.

Signatures:

Austria, Hungary, Rumania, Serb, Croat, Slovene State, Czechoslovakia.

G. U., Feb. 28, 1922, p. 442.

POSTAL SUBSCRIPTIONS TO NEWSPAPERS. Madrid, Nov. 30, 1920.

Adhesion:

Albania. *E. G.*, Mar. 8, 1922, p. 286; *Ga. de Madrid*, Mar. 29, 1922, p. 1292.

Promulgation:

Italy. Dec. 30, 1921. *G. U.*, Jan. 3, 1922, p. 5.

POSTAL TRANSFERS. Madrid, Nov. 30, 1920.

Adhesion:

Albania. *E. G.*, Mar. 8, 1922, p. 286; *Ga. de Madrid*, Mar. 29, 1922, p. 1292.

Promulgation:

Italy. Dec. 30, 1921. *G. U.*, Jan. 3, 1922, p. 5.

PROTECTION OF INDUSTRIAL PROPERTY [affected by world war] Berne, June 30, 1920.

Ratification:

Portugal. Mar. 7, 1922. *E. G.*, Mar. 29, 1922, p. 312; *Ga. de Madrid*, Apr. 5, 1922, p. 55; *Monit.*, Apr. 15, 1922, p. 3062.

RADIOTELEGRAPH CONVENTION. London, July 5, 1912. Final Protocol.
Service Regulations.

Adhesion:

Latvia. *Monit.*, Feb. 24, 1922, p. 1665.

REFRIGERATION, INTERNATIONAL INSTITUTE OF. Paris, June 21, 1920.

Promulgation:

Belgium. May 27, 1921. *Monit.*, Mar. 29, 1922, p. 2642.

France. Apr. 24, 1922. *J. O.*, May 2, 1922, p. 4542.

Ratification:

Denmark. Mar. 1, 1922.

Netherlands. Mar. 1, 1922.

Portugal. Mar. 1, 1922. *J. O.*, Mar. 8, 1922, p. 2670; *Monit.*, Apr. 21, 1922, p. 3188.

SANITARY CONVENTION. Paris, Jan. 17, 1912.

Adhesion:

Austria. Dec. 17, 1921. *E. G.*, Mar. 1, 1922, p. 278; *Monit.*, Mar. 9, 1922, p. 2058; *Ga. de Madrid*, Mar. 3, 1922, p. 950.

SERVICE DES RECOUVREMENTS. Madrid, Nov. 30, 1920.

Adhesion:

Albania. *E. G.*, Mar. 8, 1922, p. 286; *Ga. de Madrid*, Mar. 29, 1922, p. 1292.

Promulgation:

Italy. Dec. 30, 1921. *G. U.*, Jan. 3, 1922, p. 5.

SLAVE TRADE, ETC. Brussels, July 2, 1890. Revision, Saint Germain-en-Laye, Sept. 10, 1919.

Ratification:

Japan. Apr. 6, 1922. *J. O.*, Apr. 9, 1922, p. 3846.

SUBMARINES AND POISON GAS. Washington, Feb. 6, 1922.

Ratification:

United States. Mar. 29, 1922. *Cong. Rec.*, Mar. 29, 1922, p. 5164.

UNEMPLOYMENT CONVENTION. Washington, Nov. 28, 1919.

Promulgation:

Italy. Apr. 6, 1922. *I. L. O. B.*, May 3, 1922, p. 305; *G. U.*, Apr. 18, 1922, p. 895.

Ratification:

Bulgaria. Nov. 22, 1921. *I. L. O. B.*, Mar. 15, 1922, p. 170.

Italy. Mar. 31, 1922. *I. L. O. B.*, Apr. 12, 1922, p. 236.

UNIVERSAL POSTAL UNION. Revision, Madrid, Nov. 30, 1920.

Adhesion:

Albania (effective Mar. 1, 1922). *E. G.*, Mar. 8, 1922, p. 286; *Ga. de Madrid*, Mar. 29, 1922, p. 1292.

Promulgation:

Italy. Dec. 30, 1921. *G. U.*, Jan. 3, 1922, p. 5.

WHITE SLAVE TRADE. Paris, May 18, 1904.

Adhesion:

Monaco (principality) Mar. 21, 1922. *Monit.*, Apr. 12, 1922, p. 2951.

Poland. Mar. 22, 1922. *E. G.*, Apr. 19, 1922, p. 327.

WHITE SLAVE TRADE. Paris, May 4, 1910.

Adhesion:

France [and her colonies] Jan. 1, 1922.

Morocco (protectorate) Jan. 1, 1922.

Tunis (protectorate) Jan. 1, 1922. *Monit.*, Apr. 14, 1922, p. 3031.

British colonies: Bahama Islands, Ceylon, Cyprus, Kenya Colony and Protectorate, Fiji, Gibraltar, Hong Kong, Jamaica, Malta, Nyasaland Protectorate, Rhodesia (Southern), Straits Settlements, Trinidad.

Monit., Feb. 24, 1922, p. 1665; *Ga. de Madrid*, Mar. 18, 1922, p. 1166.

Curacao and Surinam. *Ga. de Madrid*, Mar. 18, 1922, p. 1166.

M. ALICE MATTHEWS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN¹

Air Navigation. Colonies and Protectorates Order in Council, February 6, 1922. (S. R. & O. 1922, No. 121.) 3d.

Arbitral tribunals. Tribunaux arbitraux mixtes, institués par les Traités de Paix. Recueil des Décisions des. Nos. 9-10. December, 1921-January, 1922. *Foreign Office*. 7s. 3d.

Copyright. Order in Council regulating relations with Bulgaria, February 6, 1922. (S. R. & O. 1922, No. 122.) 2d.

Egypt, Affairs in. Correspondence respecting. (Cmd. 1592.) 7d.

German Reparation (Recovery). Orders made by the Board of Trade under Act of 1921. No. 1 (S. R. & O. 1922, No. 139); No. 2 (S. R. & O. 1922, No. 140.) 2d each.

Merchant shipping. Order in Council as to exemption of Belgian ships from provisions of the Act of 1894 as to life-saving appliances, February 6, 1922. (S. R. & O. 1922, No. 131.) 2d.

Peru. Finance, industry, and trade to October 31, 1921; with a report on the commercial aspects of southern Peru. *Dept. of Overseas Trade*. 1s. 4½d.

Russian States. A description of the various political units existing on Russian territory (with 2 maps). *Foreign Office*. 10½d.

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UNITED STATES.²

Aeronautics Bureau. Report to accompany S. 3076 to create Bureau of Aeronautics, to encourage and regulate operation of civil aircraft in interstate and foreign commerce. January 25, 1922. 31 p. (S. rp. 460.) *Commerce Committee*.

Alien Property Custodian. Report to accompany S. 2745 to amend Trading with Enemy Act relating to return of money or other property conveyed or paid to Alien Property Custodian or seized by him. February 3, 1922. 3 p. (S. rp. 485.) *Judiciary Committee*.

¹ Parliamentary and official publications of Great Britain may be obtained for the amount noted from the Superintendent of Publications, H. M. Stationery Office, Imperial House, Kingsway, London, W. C. 2.

² Where prices are given, the document may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

Arms and munitions of war. Joint resolution to prohibit exportation of, to certain countries in which domestic violence exists. Approved January 31, 1922. 1 p. (Pub. Res. 37.) 5c.

Austria. Report to accompany S. J. Res. 160 authorizing extension of time for payment of debt incurred by Austria for purchase of flour from Grain Corporation. March 24, 1922. 3 p. (H. rp. 830.) *Ways and Means Committee*.

———. (S. rp. 561.) March 9, 1922. 4 p. *Finance Committee*.

Brazil. Report to accompany S. J. Res. 173 authorizing President to appoint commission to represent United States at centennial celebration of independence of Brazil, to be held at Rio de Janeiro in September, 1922. February 23, 1922. 2 p. (S. rp. 531.) *Foreign Relations Committee*.

China. Lansing-Ishii agreement. President's message transmitting information as to present status. March 7, 1922. 3 p. (S. doc. 150.) *State Dept.*

———. Proclamation prohibiting exportation of arms or munitions of war to. March 4, 1922. (No. 1621.) *State Dept.*

———. Report in relation to four claims by Government of China against United States for damages caused by negligent or unlawful acts of persons connected with military or naval service of United States. March 9, 1922. 4 p. (H. doc. 204.) *State Dept.*

———. Three Anglo-Japanese treaties: Agreement relative to China and Korea, January 30, 1902; agreement respecting integrity of China, August 12, 1905; agreement respecting integrity of China, July 13, 1911. 1922. 7 p. (S. doc. 163.) *Senate*.

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Conference on Limitation of Armament. Treaties and resolutions approved and adopted by. 1922. 44 p. (S. doc. 124.) *Senate*.

———. President's address to Senate, letter of Secretary of State submitting treaties to President, invitations to conference, proceedings of plenary sessions of conference, minutes of committee on limitation of armament, minutes of committee on Pacific and Far Eastern questions, report of American delegation, including treaties and resolutions, with index. 1922. 935 p. (S. doc. 126.) *Senate*.

———. Address of President of United States at concluding session of Conference, February 6, 1922. 6 p. *White House*.

———. Address of President submitting treaties and resolutions, together with report of American delegation. February 10, 1922. 132 p. (S. doc. 125.) *Senate*.

Conference on Limitation of Armament. First plenary session, November 12, 1921. 55 p. (English and French.) Paper, 15c. *State Dept.*

———. Second plenary session, November 15, 1921. 23 p. (English and French.) Paper, 10c. *State Dept.*

———. Third plenary session, November 21, 1921. 35 p. (English and French.) Paper, 15c. *State Dept.*

NOTE: There were seven plenary sessions in all, held on Nov. 12, 15, 21, Dec. 10, 1921, and Feb. 1, 4, and 6, 1922, respectively. It was originally intended to publish the proceedings of each session in the same form as used for the first three, but the plan was changed, and the last four will not be so published. The proceedings of all seven sessions, in English, are in Senate Document No. 126, 67th Congress, 2d session [above noted] and will be in the full proceedings which will be issued later.—Monthly Catalogue U. S. Public Documents, Feb. 1922, p. 475.

———. Report of American delegation of proceedings of Conference, February 9, 1922. 132 p. *State Dept.*

Foreign service of United States. Report to accompany H. R. 10213 relative to foreign intercourse of United States. February 22, 1922. 5 p. (H. rp. 646, pt. 1); minority report, February 9, 1922. 4 p. (H. rp. 646, pt. 2.) *Foreign Affairs Committee.*

Haiti. Inquiry into occupation and administration of Haiti and Santo Domingo. Hearings, 1922. pt. 3. 813–1197 p. *Select Committee.*

———. Message of President transmitting copy of commission of Gen. Russell, high commissioner to Haiti, pursuant to provisions of treaty between United States and Haiti, September 16, 1915. February 23, 1922. 2 p. (S. doc. 143.) *State Dept.*

———. Protocol between United States and, establishing Claims Commission, signed October 3, 1919. 1922. 9 p. (S. doc. 135.) *Senate.*

———. Treaty between United States and, finances, economic development, and tranquility of Haiti, signed September 16, 1915. 10 p. (S. doc. 136.) *Senate.*

Immigration. Conditions among migrants in Europe, operation of three percentum immigration act, monthly quota tables, etc. Hearings, December 13, 1921–February 13, 1922. 504 p. *Immigration and Naturalization Committee.* (Serial 1–B).

———. Report to accompany H. J. Res. 268 extending operation of Immigration Act of May 19, 1921. February 17, 1922. 11 p. (H. rp. 710.) *Immigration and Naturalization Committee.*

Inter-American High Commission. Meeting of Central Executive Council, Washington, D. C. February 2, 1922. 8 p. *Treasury Dept.* (Same in Spanish.)

Inter-American High Commission. Meeting of United States Section, Washington, D. C., January 23, 1922. 10 p. *Treasury Dept.* (Same in Spanish.)

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Migratory Bird Treaty. Proclamation further amending regulations of July 31, 1918. March 8, 1922. (No. 1622.) *State Dept.*

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———. Letter to H. C. Lodge with reference to notes delivered by Government to Minister for Foreign Affairs of Netherlands and to Portuguese Government relative to respecting their rights in relation to their insular possessions in region of Pacific Ocean. 1922. 3 p. (S. doc. 128.) *State Dept.*

Passports. Executive order amending order of August 8, 1921 concerning travel between United States and neighboring countries. February 1, 1922. (No. 3629.) *State Dept.*

Russia. Act to authorize President to transfer medical supplies for relief of distressed and famine stricken people of Russia. Approved January 20, 1922. 1 p. (Public 129.) 5c.

St. Lawrence waterway. Report concerning improvement of river between Montreal and Lake Ontario for navigation and power. 1922. 184 p. 2 pl. 8 maps. (S. doc. 114.) Paper, 25c. *International Joint Commission.*

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GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

AWARD IN THE MATTER OF THE "FRENCH CLAIMS AGAINST PERU"

BY THE ARBITRAL TRIBUNAL AT THE HAGUE¹

Award rendered October 11, 1921

Considering that by a *compromis* signed at Lima on February 2, 1914,* the Government of the French Republic and the Government of Peru have agreed to submit to an arbitral court constituted according to the summary procedure provided for in Chapter IV of The Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes, various claims of French citizens against Peru;

Considering that in execution of this *compromis* the following have been appointed arbitrators,

By the Government of the French Republic:

M. Louis Sarrut, First President of the Court of Cassation at Paris;

By the Government of Peru:

M. Federico Elguera, formerly Minister Plenipotentiary and Mayor of Lima;

Considering that these arbitrators have agreed to choose as umpire M. Frédéric Ostertag, President of the Swiss Federal Court;

Considering that the two governments have respectively appointed as agents and counsel,

The Government of the French Republic: M. Jules Basdevant, Professor in the Faculty of Law at Paris;

The Government of Peru: M. Luis Varela Orbegoso, chargé d'affaires of Peru at Brussels, agent, and M. Maurice Sand, advocate at the Court of Appeals at Brussels, counsel;

Considering that by agreements made between France and Peru on September 9, 1914, October 10, 1919, and June 28, 1920, the periods of delay respectively provided for by the said *compromis* for the deposit of the cases and counter-cases have been successively prolonged;

Considering that under date of January 31, 1920, the agent of the Government of the French Republic has regularly deposited in the International

¹ Translated from the official French text published by the *Bureau International de la Cour Permanente d'Arbitrage*.

² Printed in the SUPPLEMENT to this JOURNAL, Vol. 8 (1914), p. 240.

Bureau of the Permanent Court of Arbitration the cases relative to the aforementioned claims;

Considering that under date of January 26, 1921, the agent of the Government of Peru has regularly deposited in the International Bureau of the Permanent Court of Arbitration the counter-cases and documents relative to the aforementioned claims;

Considering that in conformity with the said *compromis* the parties have submitted to the Court motions provided with reasons;

Considering that the Court, constituted as stated above, has met at The Hague in the Palace of the Permanent Court of Arbitration on October 3, 1921;

The Arbitral Court,

With regard to Dreyfus Brothers and Company;

Whereas, by contract under date of August 17, 1869, the State of Peru sold to Dreyfus Brothers and Company 2 million tons of guano, the profit of Dreyfus Brothers and Company to result from the resale, for which a monopoly was granted to them in the markets of Europe and its colonies;

Whereas, Dreyfus Brothers and Company have bound themselves expressly to advance the sums necessary for the purposes of a loan;

Whereas, on the occasion of this contract and others that modified it, numerous disputes were brought before the Peruvian courts;

Whereas, on April 4, 1879, war broke out between Peru and Chile; whereas, at the end of the month of December, 1879, when the legal government had disappeared, Nicolas de Piérola seized the power and was proclaimed supreme chief of the republic;

Whereas, on April 3, 1880, Dreyfus Brothers and Company wrote to President de Piérola "that they entrusted to him the decision of the questions in dispute and that they accepted his decision in advance"; whereas, by letter of April 13, President de Piérola "using his exceptional powers, undertook the solution," and consequently, rendered from April 13 to November 18, 1880, various decisions which, passing judgment on all the points in dispute, fixed the balance of the credit of Dreyfus Brothers and Company on June 30, 1880, at the sum of 16,908,564.62 soles (sixteen million nine hundred eight thousand five hundred sixty-four Peruvian soles and sixty-two centavos), or £3,214,388.11.5 Sterling (three million two hundred fourteen thousand three hundred eighty-eight pounds sterling eleven shillings and five pence), approved by the Court of Accounts and confirmed by an authentic act, received on December 1, 1880, by Me. Suarez, notary;

Whereas, Nicolas de Piérola was proclaimed supreme chief of the Republic by popular assemblies and maintained by numerous plebiscitary adhesions; whereas, he exercised the legislative power, the executive power and, in part, the judicial power; whereas, on June 28, 1881, he voluntarily resigned these functions but was immediately invested with the presidency of the Republic by the National Assembly; whereas, his government was recognized espe-

cially by France, England, Germany and Belgium; whereas, finally, the High Court of Justice of England (decree of February 23, 1888), the Court of Appeals of Brussels (decree of July 10, 1888), the Franco-Chilean Arbitral Court (award called Award of Lausanne of July 5, 1901), being decrees and an award of which the Arbitral Court adopts the reasons, have deemed that this government represented and bound the nation;

Whereas, it is of slight importance that a Peruvian law of October 25, 1886, declared "all the internal acts of the government performed by Nicolas de Piérola null," since this law can not be applied to foreigners who treated in good faith;

Whereas, consequently, the credit of Dreyfus Brothers and Company has been legally and finally fixed at the sum above stated;

Whereas, it is in order to add to this sum: the sums entered in the statements of account (1) from July 1 to December 31, 1880, (2) from January 1 to June 30, 1881, (3) from July 1 to December 31, 1887, (4) from January 1 to June 30, 1889, (5) from July 1 to December 31, 1912, but, whereas, it is in order to deduct therefrom the sums paid by virtue of the award of the Franco-Chilean Arbitral Court, under date of July 5, 1901;

Whereas, since no settlement has intervened, the French Government and the Peruvian Government signed on May 7, 1910, a protocol called Guillemín-Porras, according to which "with a view to securing admission to the official quotation of the Paris Stock Exchange of the loan that it was negotiating with French financial establishments, the Peruvian Government consented to the levy, on the proceeds of the loan, of the sum of 25,000,000 francs, in order to indemnify the French creditors represented by the *Banque de Paris et des Pays-Bas* (to wit, Dreyfus Brothers and Company, Financial and Commercial Company of the Pacific, the Widow Philon Bernal (Hautier) and Gilliard). With regard to the other claims which French nationals have made against the State of Peru, the Peruvian Government agreed to submit them to the judgment of an arbitral court, the duty of which it was to render judgment on the validity of the claims and on the possible amount of indemnities to be allotted"; but, whereas, the Peruvian Congress refused to approve the loan and, consequently, this protocol lapsed;

Whereas, on December 31, 1912, the following Peruvian law was promulgated: "The executive power is authorized to submit, in agreement with the Government of the French Republic, to the Arbitral Court of The Hague, the claims of the French creditors represented by the *Banque de Paris et des Pays-Bas*, stating in the protocol which shall be signed to this effect that in no case will the Government of Peru consent to be bound to make a disbursement exceeding 25,000,000 francs in this connection; it is, likewise, authorized to submit, if it deems it necessary, in agreement with the same French Government, to the Arbitral Court all other French claims that may be in suspense and that appear to be well founded";

Whereas, in conformity with this law there was signed on February 2, 1914,

at Lima, between the Minister of Foreign Relations of Peru and the Envoy Extraordinary and Minister Plenipotentiary of the Republic, a new protocol, approved by decree of February 12; whereas, this protocol provides in the first paragraph: "The French and Peruvian Governments have resolved to submit to an arbitral court sitting at The Hague, the claims of the French creditors presented in 1910 by the *Banque de Paris et des Pays-Bas*, in order that this court may decide whether the said credits are well founded and, if they are, their amount";

Whereas, by virtue of this text the preceding clauses have established the validity and the amount of the credit of Dreyfus Brothers and Company;

Whereas, since this credit is liquid and payable, interest at 5 per cent is due from the date of the payability of each of the sums composing it, the current interest up to June 30, 1880, being included in the sum of 16,908,564.62 soles (sixteen million nine hundred eight thousand five hundred sixty-four soles and sixty-two centavos), or £3,214,388.11.5 Sterling (three million two hundred fourteen thousand three hundred eighty-eight pounds sterling eleven shillings and five pence);

Whereas, on the other hand, it is not in order to admit the claim relative to the capitalization of the interest; whereas, in fact, the capitalization of the interest can result only from a stipulation or from circumstances of fact making clear the consent of the debtor to assume such an onerous obligation; whereas, the consent of the Government of Peru has not been given; whereas, moreover, if the capitalization of the interest, which would increase the debt considerably, had been provided for, the French Government would not have demanded only a sum of 25,000,000 francs, as appears from the second paragraph of the protocol.

With regard to the Financial and Commercial Company of the Pacific:

Whereas, the Government of Peru recognizes that it owes the principal sum of £104,000 sterling, 282,636 francs with interest at 5 per cent, but refuses in good law the capitalization of the interest;

With regard to the Widow Philon Bernal (Hautier):

Whereas, the Government of Peru recognizes that it owes the principal sum of 350,000 francs and interest at 6 per cent from July 1, 1875, after deducting instalments received by virtue of the award of the Franco-Chilean Arbitral Court, but refuses in good law the capitalization of the interest;

With regard to Gilliard:

Whereas, the Government of Peru recognizes that it owes the principal sum of 5,000 francs and interest at 6 per cent from July 1, 1875, but refuses in good law the capitalization of the interest;

Whereas, the second paragraph of the protocol provides as follows: "It is agreed that the two governments shall comply with the arbitral award, whatever it may be, and that if this award is favorable to the said French creditors, the Government of Peru will, within the period of delay fixed by the said award, pay the amount of the adverse judgment through the legation of

France, it being understood that in no case the French Government shall demand for them from Peru a sum exceeding 25,000,000 francs, stipulated in the Guillemin-Porras protocol”;

Whereas, according to the fourth paragraph of the protocol “the Peruvian and French Governments decide also to submit to the same arbitral court the other French claims covered by the Peruvian law of authorization of December 31, 1912”;

Whereas, the claim of Eugène Robuchon, as well as that of Alexandre Coichot are not justified either in law or in fact;

Whereas, the claim of Charles Chasselon is not disputed;

Whereas, the claim of Duverneuil is recognized as being well founded with regard to its capital, but whereas, the Government of Peru disputes unjustly that it owes interest at 5 per cent from January 1, 1910, the debt being liquid and payable and the government having been ordered to pay it;

Whereas, the arbitrary detention which Momboisse suffered has caused him a loss which the arbitral court estimates at the sum of 25,000 francs;

FOR THESE REASONS

Declares that it is not in order to render judgment on the claims of Remant and Ratouin which have been withdrawn; fixes the actual amount of the debts at the sums determined above in capital and interest; rejects the capitalization of the interest; decides that the sum of 25,000,000 francs shall be remitted to the French Government, which shall apportion it among the creditors of Dreyfus Brothers and Company, the Financial and Commercial Company of the Pacific, the Widow Philon Bernal (Hautier) and Gilliard, in proportion to the sums due them, and in view of the circumstances of the case, states that the payment shall be made in annual instalments of 5,000,000 francs; rejects the claim of the heirs of Robuchon and that of the heirs of Coichot; decides that the Government of Peru shall pay to Chasselon the sum of 2,943 francs with interest at 5 per cent, beginning with the month of January, 1908, to Duverneuil the sum of frs. 6,411.20 with interest at 5 per cent from January 1, 1910, to the assigns of Momboisse the sum of frs. 25,000; decides that the sums due shall bear interest at 5 per cent until their complete payment; rejects all other claims and motions;

Done at The Hague in the Palace of the Permanent Court of Arbitration, on October 11, 1921.

The President: OSTERTAG.

The Secretary General: MICHIELS VAN VERDUYNEN.

The Secretary: CROMMELIN.

REPORT CONCERNING THE LOSS OF THE DUTCH STEAMER "TUBANTIA"

BY THE INTERNATIONAL COMMISSION OF INQUIRY AT THE HAGUE¹*Report rendered February 27, 1922*

Considering that by a convention of inquiry concluded at Berlin on March 30, 1921, the Government of the German Reich and the Government of Her Majesty the Queen of The Netherlands, respectively signatories of The Hague Convention of October 18, 1907, for the Pacific Settlement of International Disputes, have agreed to submit to an international commission of inquiry constituted in accordance with the provisions of Chapter III of the said convention, the question of ascertaining what was the cause of the loss of the Dutch steamer *Tubantia* which occurred on March 16, 1916;

Considering that according to the terms of the said convention of inquiry, the International Commission of Inquiry has been composed of:

M. Hoffmann, formerly member of the Swiss Federal Council, President;

M. Surie, Rear Admiral in Reserve of the Dutch Navy;

M. Ravn, Naval Captain, Director of the Hydrographic Service of the Danish Navy;

M. Unger, Frigate Captain of the Swedish Navy;

M. Gayer, Corvette Captain of the German Navy;

Considering that the two governments have respectively named as agents and counsel,

The Government of the German Reich: M. Karl von Mueller, Naval Captain in Reserve;

The Government of Her Majesty the Queen of The Netherlands: Professor A. A. H. Struycken, member of the Council of State, member of the Permanent Court of Arbitration, Agent, and M. Canters, Naval Captain, Director of the Torpedo Factory, Counsel;

Considering that the Dutch and German cases have been regularly deposited in the International Bureau of the Permanent Court of Arbitration on July 27 and 29, 1921, respectively;

Considering that the Dutch and German counter-cases have been regularly deposited in the International Bureau of the Permanent Court of Arbitration on September 23 and October 14, 1921, respectively;

Considering that the examination being closed, the International Commission of Inquiry, constituted as stated above, has met at The Hague in the Palace of the Permanent Court of Arbitration on January 18, 1922;

Considering that since the parties have presented all their explanations and proofs and the witnesses and experts have been heard, the President of the Commission has pronounced the inquiry closed;

The International Commission of Inquiry has drawn up the following report:

¹ Translated from the official French text published by the *Bureau International de la Cour Permanente d'Arbitrage*.

I

1. On March 15, 1916, the steamer *Tubantia*, belonging to the incorporated company *Koninklijke Hollandsche Lloyd*, left Amsterdam with South America as its destination. It had eighty passengers on board; the crew was composed of two hundred and eighty persons. According to the manifest the cargo contained no explosives.

At 6:15 P.M. the steamer was in the open sea and steered for the light-ship *Maas*.

The vessel was sufficiently illuminated; beside the prescribed lights of position two arc lamps illuminated the name "*Tubantia, Amsterdam*" on the planking and two other arc lamps illuminated the name on the plate.

Furthermore, the illuminated plate had been raised between the two funnels and all the lights on the bridge and those in the cabins were lit as far as possible.

At 9:59 P.M. the vessel passed the light-ship *Maas*. The weather is indicated as follows: misty horizon, visibility from four to five marine miles, gentle east-north-east wind, choppy sea. The speed of the vessel maintained up to the moment of the explosion was from nine to ten marine miles.

2. At 2 A.M. the captain ordered everything prepared for casting anchor near the *Nord-Hinder*. At 2:15 the sounding was made. The captain went to the map room in order to control the sounding.

The fourth officer Van Leuven was on the port bridge near the telegraph, the first officer Vreugdenhil was at starboard occupied with giving his orders to the machine room. At 2:20 the fourth officer Van Leuven suddenly observed a streak in the water, approaching the vessel in a direct line at about six points. He thought that it was the wake of a torpedo and a moment before the explosion he cried: "Look there!" Immediately afterward the explosion took place.

The same observation of a white thin streak moving with great rapidity in the direction of the vessel was made by the lookout-man, P. Groot. He claims that he immediately recognized it as the wake of a torpedo, a phenomenon that he says he has seen repeatedly during the practice of launching torpedoes. He announced to the first officer immediately after the explosion that the vessel had been hit by a torpedo of which he had seen the wake moving toward the ship.

The exclamation: "Look there!", was also heard by the first officer Vreugdenhil and the third officer De Vos, as well as by the captain, Wijtsma, who was in the map room on the bridge, the doors of the room being open.

It must be conceded to the agent of the German Government that the depositions of the witnesses do not agree on all points, and also that in different cross-examinations of the same witnesses a certain amplification may be noted in the addition of details. But neither this experience, which is frequent, nor the general consideration that in observations of this kind ex-

amples of autosuggestion are easily found, can, according to the opinion of the Commission of Inquiry, detract from their value. The depositions of the witnesses are clear and positive, they do not contradict each other, and what some say they saw is confirmed in a manner worthy of belief by what others heard immediately after the catastrophe.

3. According to the concurring depositions of the fourth mechanic Wouters and of Koger, who was in charge of the bunkers, the shock was terrible and caused the whole ship to tremble. Wouters, who was on guard in the engine room, had gone with Koger to the upper coal bunker at starboard in order to open the hatchway which was blocked by coal. He claims that he saw a faint light followed by a powerful detonation. A stream of water entered and drenched the two men, who rescued themselves through the hatchway, which they succeeded in opening after a great effort.

4. The ship sank at 6:53 A.M. The place of the wreck was fixed at 51° 48' 40" north latitude and 2° 50' 15" east longitude.

II

5. In several boats of the *Tubantia* there was found a certain number of scraps of metal which have been recognized as being parts of a torpedo.

Boats No. 15 and 20 were picked up on March 16 by the steamer *Batavier III* and were towed to Rotterdam, where they were anchored with the *Batavier III* at its customary wharf at Boompjes. One or two days later they were towed by the *Brinio II* to Schiehaven. There Captain Bustraan examined them and found among the fragments a piece of bronze which was recognized as forming part of a 45 centimetre torpedo (a piece of the Schwartzkopf compressed air chamber).

On April 1 and 12, 1916, two other boats of the *Tubantia* were found, No. 23 floating near Terschelling, and No. 17 cast ashore at Callandssoog. In these two boats there were found among other things two scraps of copper on which the number 2033 was impressed. As appears from the declaration of the Chief of the German Admiralty of May 11, 1916, these scraps have been recognized as being fragments of the bronze torpedo C 45/91 No. 2033.

The two boats No. 23 and 17 were immediately placed under guard.

The bronze torpedo C 45/91 No. 2033 was part of the armament of the submarine U. B. 13.

6. From the depositions of the officers and sailors of the *Tubantia*, according to which they saw the wake of the torpedo immediately before the explosion, and from the fact that the fragments of torpedo No. 2033 belonging to the armament of the U. B. 13, were found in the boats of the *Tubantia*, it appears that the U. B. 13 launched the torpedo which caused the explosion on board the *Tubantia*.

The agent of the German Government claims, on the other hand, that the submarine U. B. 13 was during the critical night from March 15 to March 16, 1916, at 3:35 A.M. at 51° 52' north latitude and 2° 23' east longitude, that is,

a distance of 12 marine miles from the position which the light-ship *Nord-Hinder* had at the time, and that it launched a torpedo against a boat which bore no light except at the head of the mast.

This assertion is based upon an entry in the logbook of the U. B. 13, an entry which, however, can be produced only in the form of a non-authentic copy. The route card, signed by the commander of the U. B. 13, which presents details agreeing with these statements, is in existence, to be sure, but the original of the commander's report was destroyed with the majority of the documents relative to the submarine war, in part during the retreat from Flanders, in part during the revolution. The German Government is, therefore, not able to furnish authentic proof showing the contradiction of dates and the indication of the place with date and place of the sinking of the *Tubantia*.

Furthermore, these contradictions would hardly be conclusive.

According to the depositions of the officers of the *Tubantia*, the explosion took place at 2:20 A.M. This indication is given by astronomical time. Captain Witjsma has deposed that when he arrived in the open sea the clocks were regulated according to astronomical time, as is usually done in the Dutch merchant fleet. The entry in the copy of the logbook is based on Central European time. The difference is not so considerable that it might not be ascribed to errors on one side or the other in observations or annotations.

The difference between the indications of place is more considerable. The *Tubantia* was sunk at $51^{\circ} 48' 40''$ north latitude and $2^{\circ} 50' 15''$ east longitude. This calculation, made at the time of the examination of the wreck, can not be subject to any doubt. According to the annotations in the copy of the logbook, in agreement with the route card, the unilluminated vessel was torpedoed at $51^{\circ} 52'$ north latitude and $2^{\circ} 23'$ east longitude.

Apart from certain difficulties inherent in a determination of location demanding such great precision, the experiences of the war show that the possibility of errors in navigation is by no means excluded.

III

7. According to the indications contained in the copy of the logbook of the U. B. 13, the latter torpedoed on March 16 a steamer of about 2000 to 3000 tons which, save for a light on its mast, bore no light at all, and not the *Tubantia* which without contradiction was sufficiently illuminated. One would be inclined to explain this error by the fog which according to the witnesses was so dense that some boats could no longer perceive the lights of the *Tubantia*, and that it was necessary to sound the bell for fear of a collision. But it will be objected with good reason that at the moment in question, that is to say, immediately before the explosion, the captain estimated the visibility at four marine miles. Nevertheless, it is not absolutely excluded that perhaps the lower part of the vessel might have been hidden by one of those

intermittent fogs so frequent in the North Sea, so that only the light on the mast was visible.

But rejecting this hypothesis and admitting that an error of the captain of the U. B. 13 is not impossible, the Commission can not consider this fact as decisive proof that the *Tubantia* was not torpedoed. It must take account of the possibility that the Commander of the U. B. 13 may have acted in violation of the instructions and orders of his superiors and against the intentions and decisions of the German Government.

It is true that the indications of the logbook are confirmed to a certain degree by the depositions of the witness Dehmel. He believes that he remembers that in the critical night a vessel of medium size and entirely without lights was torpedoed, and he denies in this connection that at this time, or in general as long as he was a sailor on board the U. B. 13, a large vessel sufficiently lighted was torpedoed. But the manner in which this witness has attempted to offer his testimony in favor of a foreign government, is not likely to inspire the necessary confidence. Moreover, he has served a term in prison.

IV

8. According to the brief of the German Government, the torpedo C 45/91 No. 2033 had already been launched by the submarine 13 (Commander, the Naval Lieutenant Neumann) on March 6, 1916, at 4:43 P.M., against an English destroyer about three miles north-east of the light-ship *Nord-Hinder*; the shot missed its mark. The brief is based upon an annotation in the logbook and upon the extract of the list of torpedoes employed. The Naval Lieutenant Neumann who commanded the U. B. 13 on March 6, 1916, has confirmed this annotation and has declared that he would consider an error or a change of number on the torpedo as almost impossible. Since there is no indication that the torpedo No. 2033 was recovered, the agent of the German Government concludes that the *Tubantia* could have been hit by this same torpedo on March 16, 1916, if as the result of a mechanical fault the torpedo launched on March 6 did not sink but continued to float and was struck in this state by the *Tubantia*. The agent of the Dutch Government replies that a torpedo launched on March 6, at 4:43 P.M., three miles north-east of the light-ship *Nord-Hinder* could not have been found on March 16 between midnight and 4 A.M. in the neighborhood where the *Tubantia* foundered, but that it would have reached by that time a distance of at least 19 marine miles from the point of the disaster. This assertion is based upon the reports of the expert of the Dutch Government, Dr. van der Stok, Director of the Royal Netherlands Institute of Meteorology. His report and the declarations that he has made before the Commission are based on the fact, established by numerous observations and measurements, to the effect that on the Dutch coast there is a progressive movement of the surface water in the direction of north and north-east. While taking account of the effect of periodical tidal currents, he estimates that as a result of this progressive

movement a torpedo launched near the light-ship *Nord-Hinder* and remaining afloat would have been borne in a northerly direction to a great distance from the place of the wreck.

The expert of the German Government, Professor Dr. Mecking, has claimed that in spite of the existence of the progressive movement of the water, experiments have shown that floating bodies have moved in a direction against the progressive current. He has denied that the calculations of Dr. van der Stok are conclusive in the present case, because the method applied by him does not show the accuracy of the methods of modern oceanographic science. According to him, these observations would have had to be much more numerous and they would have had to be made at the precise depth where the torpedo floated.

Professor Mecking is of the opinion that account would have to be taken not only of the influence of the current upon the floating body, but above all of the influence of the wind; this latter influence, he says, would be considerable.

The Commission has been unable to arrive at the conviction that calculations of this nature could be conclusive and could furnish proof for an object of concrete observation, and it believes that in spite of the most minute observations of currents and winds it will not be possible to find a torpedo which has been launched and has remained afloat for ten days at the point where it ought to be according to the calculations.

The Commission can not, consequently, decide that it is impossible that a floating torpedo struck the *Tubantia* at the point where this vessel sank.

9. The assertion whereby the *Tubantia* was struck by a floating torpedo is combatted by the agent of the Dutch Government; he affirms that, in view of the size and form of the hole, the *Tubantia* was not struck at the water line but two or three meters below it. According to the report of the diver, the hole extends in its entire breadth as far as the planking of the surface which was torn away for several feet. The maximum size of the hole is 12 meters. The hole terminates in an angle at the foot of the "T" of the word Amsterdam. The bridge, the base and the interior bulkhead of the lower lateral bunker B were torn away to a great extent. In the ceiling of the upper lateral bunker C, and consequently, in the upper bridge there was a large hole.

The expert of the German Government Techel, doctor of engineering *hon. causa*, in oral explanations, has observed that it follows from experiences in the German Navy that when a torpedo moving at a normal depth explodes, the damage ceases near the water line. It has been possible to determine this damage in the case of a torpedo which burst about a meter under the water line. It follows that a torpedo floating at a slight depth can have only comparatively insignificant effects upward. The expert believes that the explosion took place about a meter under the water line. According to him this version is corroborated by the fact that fragments of bronze were found

in four boats and that, consequently, still other fragments, that is a comparatively large number, struck above the water line.

The Commission does not deem it possible to fix the point where the explosion of the torpedo took place by judging only by the size and form of the hole. Nevertheless, in view of the size of the hole and the importance of the damage within the ship, it seems to the Commission more likely that the explosion of the torpedo took place several meters below the water line.

10. The thesis developed by the agent of the German Government according to which the *Tubantia* was struck by a floating torpedo, a thesis based on the indication of No. 2033 in the list of torpedoes that had been launched, is disputed by the agent of the Dutch Government, who opposes it with the possibility of an error. In truth, it must be admitted that such an error could easily be made, given the fact that this number had to be transcribed several times. The supposition that the error would have been found during the inspection of the torpedoes at Kiel and that then a claim would have been made upon the commander of the U. B. 13 is hardly compatible with the difficulties and exigencies of the war. It may be readily understood that errors could creep into the registers of torpedoes that had been launched.

However this may be, the fact that the same torpedo number is found in the list of torpedoes launched and on the torpedo fragments found in the boats of the *Tubantia* is not of sufficient importance to invalidate the depositions made by the officers and sailors of the said vessel.

V

11. In the last place, the Commission has had to consider the possibility of the torpedoing of the *Tubantia* by a vessel belonging to a power hostile to Germany.

Several witnesses relate that some hours after the catastrophe of the *Tubantia* the occupants of the life boats perceived a group of lights in the direction opposite that of the light-ship *Nord-Hinder*. Since the submarines belonging to the flotilla stationed at Zeebrugge had no search-lights on board, the presence of a non-German vessel of war must be concluded.

However, this fact can in no way justify the suspicion that some would wish to deduce therefrom. It is not at all surprising that after the explosion a non-German vessel of war should have approached the place of the disaster and should have desired to throw its search-lights about in the vicinity.

Moreover, there is not the least proof for admitting that a vessel of a power hostile to Germany torpedoed the *Tubantia* and that, subsequently, fragments of the German torpedo No. 2033, recovered by the enemy vessel, were surreptitiously placed in the boats. It is evident that such a procedure, as complicated as it is perfidious and destined to prejudice Germany in the eyes of the neutral countries and to provoke anti-German feelings there, could never be presumed. In default of all proof this hypothesis must be discarded.

VI

12. After weighing all the proofs, the Commission has reached the conviction that the *Tubantia* was sunk on March 16, 1916, by the explosion of a torpedo launched by a German submarine. The question of determining whether the torpedoing took place knowingly or as the result of an error of the commander of the submarine must remain in suspense. It has not been possible to determine that the loss of the *Tubantia* was caused by striking a torpedo that had remained afloat. Although it can not be denied that a certain number of indications militate in favor of the latter possibility, the Commission, after examining them conscientiously and comparing them with the other proofs, can not recognize that these indications are conclusive and have the force of proof.

No indication permitting the assumption of any other cause for the loss of the *Tubantia* could be produced.

Done at The Hague, in the Palace of the Permanent Court of Arbitration on January 27, 1922.

The Commissioners	{	HOFFMANN, <i>President</i> .
		SURIE.
		RAVN.
		UNGER.
		GAYER.

BOOK REVIEWS

Introduction à l'Etude du Droit Pénal International. By H. Donnedieu de Vabres. Paris: Librairie de la Société du Recueil Sirey. 1922. pp. 482.

This book is the latest contribution to the increasing literature dealing with what the author calls the new science of international criminal law. It is a work of high scientific value and contains evidence of painstaking research and of historical erudition. At the outset he emphasizes the "frightful progress of international criminality" resulting from the development of facilities for communication and the invention of new instrumentalities for the commission of international crimes. The time has therefore arrived when the world must establish an organized, internationalized system of repression to prevent the further spread of this rapidly increasing criminality. The existing system under which the criminal law is regarded, in the main, as strictly national and territorial and in accordance with which each state punishes criminal acts (with a few exceptions) committed only within its own territories is totally inadequate to meet the situation today. The list of "extra-territorial" crimes should be enlarged and a system of international repression should be organized. M. Donnedieu, however, does not enter in details as to this. His work is mainly historical. He reviews the doctrines of the jurists, the legislation of states and the jurisprudence of the courts, principally of Rome, Greece, France, Germany, the Netherlands and Italy, from early times to the present, in regard to the competence of the courts concerning crimes committed abroad by the state's own nationals and by foreigners either against its nationals or against the security of the state itself.

The birth of modern international criminal law, he tells us, dates from the conclusion of an extradition treaty in the year 1376 between the King of France and the Count of Savoy, which he seems to regard as the first of the kind of which there is any record. (Professor J. B. Moore, however, refers to an English-Scotch extradition treaty in the twelfth century.) Grotius, who advocated the extradition of offenders against the common law including even the state's own nationals, and who recognized the right of asylum only for those who were the victims of an "undeserved hatred," he considers to have been "the most illustrious representative, after Covarruvias, of the principle of universal repression," although the earlier doctrines of Bartolus exerted great influence on the conceptions of later centuries. Throughout history there have been, he says, two opposing and contradictory ideas concerning the extra-territorial competence of the courts and as to the whole problem of international criminal repression. The first was the *imperialistic* or *nationalistic* conception which dominated the Roman law and inspired

the French jurisprudence of the seventeenth century. It was based on the doctrine of the "interest of the state" which alone determined the competence of the courts and the duty of extradition. The second was the *cosmopolitan* or *universalist* doctrine of the Greeks, which was also the doctrine of Grotius and his school, based on the idea of community of rights and obligations and which made the "duty of the state" the test of the competence of the courts. It reflected the notion of the universal repercussion of crime and the legal obligation of states to extradite criminals taking refuge in their territories. It could be summed up in the "universality of the right to punish."

The conviction which one has after reading M. Donnedieu's treatise is that there is little or no international criminal law in the real sense of the term. There is some legislation and some rules regarding the competence of courts in respect to certain extra-territorial crimes, but aside from a few acts, such as piracy, the slave trade, the white slave traffic, the circulation of obscene publications, etc., there is no international criminal legislation, nor is there as yet any international judicial or police machinery of repression. The recommendation of the recent Peace Conference Commission on Responsibility of the Authors of the War that penal sanctions should be provided for outrages against the elementary principles of international law, and of the Advisory Committee of Jurists which drafted the statute of the Permanent Court that a high court of criminal justice be established to try crimes against international law, indicate a growing sentiment in favor at least of the creation of an international criminal jurisdiction. The Permanent Court, as finally established, however, was given no such jurisdiction. The so-called international criminal law, therefore, remains, as M. Donnedieu admits in his definition, *un droit interne*, it is merely "the science which determines the competence of the criminal courts of one state *vis à vis* the courts of foreign states, the application of its criminal laws in respect to the places and persons which they regulate, and the authority, within its territory, of foreign repressive judgments (p. 6). It is, in short, mainly a matter of conflict of laws as between different states. He does not go to the length of saying as much, though it may be inferred from his criticism of the existing state of the law, that he would agree with M. Travers in his more constructive recent work (*Le Droit Pénal International*), who proposes, in effect, to transfer a large part of the criminal law to the domain of international law, and instead of leaving its enforcement to the sporadic and isolated action of states acting separately, to entrust its execution to an international organization and machinery. Thus the criminal law would in part, be made international, if not supernational, and its execution would cease to be a matter of local or national interest but would become the concern of the whole body of states or of groups of states. There is nothing to indicate, however, that a reform so radical is likely to find many advocates, at least in the immediate future.

JAMES W. GARNER.

International Law chiefly as interpreted and applied by the United States. By Charles Cheney Hyde. 2 vols. Boston: Little, Brown, and Company. 1922. pp. lix, 832; xxvii, 925. \$25.00.

This work is first and foremost a law book, not a philosophical treatise, or an essay upon international ethics, or a *Tendenzschrift* of any sort. It was intended to be what it is: a systematic text from the positive point of view, wherein one trained in legal ways of reasoning and expression might find a statement as to what the law is. As such its first appeal ought to be to lawyers, whose interest in the subject is primarily professional. Among the mass of general texts on international law there is none quite like this, either in content or in method. The title indicates this difference. To consider international law chiefly as interpreted and applied by the United States is to provide a basis by which the author is enabled to set forth what one not inconsiderable person in international law has authoritatively considered and set forth as its conception of international rights and duties. Not that there is a special international law for the United States (that would be a body of privileges), or, as Mr. Alvarez would have, even for America. The volumes "express an attempt primarily to portray what the United States, through the agencies of its executive, legislative and judicial departments, has deemed to be the law of nations."

Moore's *Digest*, of course, in a way opened the path. Mr. Hyde frankly acknowledges his obligation to that great work. But he has not merely prepared a text from the *Digest*, although that alone might have been well worth doing. This work is neither a distillate nor a supersession of Moore's *Digest*. If there is an adjudicated case, or printed diplomatic document, or any piece of source material throwing light upon the attitude of the United States in reference to any question of international law and omitted by Mr. Hyde, the reviewer confesses his inability to detect the omission. The citations are not restricted to American documents; foreign texts and materials are referred to in sufficient abundance to direct the student farther. It is fair to say, therefore, that here is a legal text, not based upon subjective prepossessions, but one prepared with careful and judicial objectivity in order to show what the United States has officially set forth as its conception of international law. Such a plan may seem strange to many continental jurists, but what obligations all those interested in international law would lie under if the same sort of treatise could be done for international law chiefly as interpreted and applied by Great Britain, and another for France, and another, say, for Japan, and so on, with an ultimate synthesis upon the basis of universality? But no other country has as yet put forth a work comparable with Moore's *Digest* to prepare the way for such an undertaking.

Noting, then, this determination on the part of the author to be objective in spirit as well as positive in method, we may well expect the result to be

authoritative. Such indeed it ought to be. That the author has views of his own and is not blinded by authority is evident. He does not, however, intrude his opinions upon the text, but relegates them to the footnotes, which are full and illuminating. As illustrations one may recommend a reading of Mr. Hyde's opinion of the position taken by the United States Government in the matter of the *Appam* (II, 738-9, note), and the delicious reference to President Wilson's adjuration to mental neutrality as affecting international duties (II, 765).

It was quite in harmony with the author's plan and point of view to omit the usual preliminary excursus upon the history of international law. He strikes at once into the subject of legal rights and duties, and these are the product of that international society, made up of "enlightened states" which, "notwithstanding grave and occasional lapses have generally molded their practice," have felt themselves bound to observe, and therefore commonly do observe, with a sense of legal obligation certain principles and rules of conduct.

In so far as one may speak of an underlying philosophy in Mr. Hyde's work, it would seem to be that by the perfection of international society by the choice of enlightened states in their mutual dealings, there is perpetuated a progressive international law, not fixed and static, but elastic, so as to meet the needs of such a society: "It must be borne in mind that what the consensus of opinion of enlightened states deems to be essential to the welfare of the international society is ever subject to change, and that the evolution of thought in this regard remains as constant as at any time since the United States came into being. Above all, it must be apparent that whenever the interests of that society are acknowledged to be at variance with the conduct of the individual State, there is established the ground for a fresh rule of restraint against which the old and familiar precedents may cease to be availing" (I, 3). This is a doctrine of progress without any necessary neo-Hegelian connotations, although the idea of progress as resulting from the interrelations of enlightened states approaches Kohler's conception of *Kulturrecht*.

It would seem that a concept of international justice, while pragmatic in character, is none the less essential to the general scheme; thus: "the maintenance of justice is of greater concern to the international society than the continued independence of any member thereof; and justice among nations is obstructed and held in contempt whenever a State, which loses its capacity to perform its common duties towards the outside world, is long permitted to continue its existence without external restraint. This principle is believed to be relentless in its operation" (I, 23). This is a restatement in more modern terminology of Lorimer's classical doctrine of the Reciprocating Will. Naturally from such a point of view the old absolute rights of states fall into the background, and emphasis is shifted to the organized society of enlightened states. Its effect is noticeable in the discussion of intervention

(I, 116-132). And yet the state, essentially as at present constituted, is the fundamental postulate and primordial unit of international law.

Centering the general scheme about international persons of normal status (states), the author proceeds to consider their normal rights and duties, those of political independence (recognition, continued existence, self-defense, and intervention), the general rights of property and control, jurisdiction, and nationality. To substitute the phrase "rights of property and control" for "rights of sovereignty" may be objected to by some: it certainly is not an exact equivalent for the latter phrase, and under it one looks in vain for a discussion of some of those territorial interests which are less than sovereign, *e. g.*, leaseholds, a juristic anomaly perhaps, but none the less important on that account. Can there be military occupancy of leased areas in derogation of the rights of the lessor? Some, again, may question the author's terminology in describing the United States as a "lessee in perpetuity" of the Canal Zone (I, 344). Under the general title of Rights and Duties of Jurisdiction, Mr. Hyde has included a careful analysis and survey of the subject of international claims, a subject essentially juristic and affording abundant illustrations of "justiciable controversies." No chapter shows more discriminating treatment or is likely to have greater professional usefulness than this.

Lack of space prevents consideration of many matters which tempt the reviewer. Servitudes, the most-favored-nation clause, the arming of merchantmen, the "blockade" of Germany,—the treatment of each of these subjects will provoke discussion. The volumes are a distinct contribution to the literature of international law, worthy to be classed, or rather used, with Westlake and Oppenheim, for each work has its peculiar merits. A monument of patient and scholarly research, it is likely to be enduring. All American students must have recourse to it, and others will not be apt to neglect it.

JESSE S. REEVES.

Documents allemands relatifs à l'Origine de la Guerre. Collection complète des documents officiels rassemblés avec quelques compléments par Karl Kautsky et publiés, à la demande du ministère allemand des affaires étrangères, après révision en commun avec Karl Kautsky, par le comte Max Montgelas et le professeur Walter Schücking. Translated into French by Camille Jordan, minister plenipotentiary. Paris: Alfred Costes, 1922.

Volume I: From the assassination of Serajevo to the arrival of the Serbian reply. pp. xxxiv, 339.

Volume II: From the arrival of the Serbian reply to the news of the Russian general mobilization. pp. xiii, 243.

Volume III: From the news of the Russian general mobilization to the declaration of war against France. pp. xviii, 217.

Volume IV: From the declaration of war against France to the Austro-Hungarian declaration of war against Russia (with annexes). pp. xvi, 256.

This work is a translation of the so-called Kautsky documents, originally published in German (4 volumes) at Charlottenburg in 1919 and bearing the German title *Die deutschen Dokumente zum Kriegsausbruch*. The intrinsic historical importance of this complete collection of German documents relating to the outbreak of the war, which consists of official letters, despatches and reports passing mostly between German diplomats and high government officials during the critical days that preceded the war and which forms the fullest available set of records for this period, makes a French translation very welcome.

The formidable task of translating the voluminous work has been performed with care and accuracy by M. Camille Jordan, who has the title of minister plenipotentiary in the Ministry of Foreign Affairs. The many footnotes of the original and the German Emperor's marginal comments have been painstakingly reproduced and supplemented here and there by translator's notes. There are complete chronological tables and lists of errata for each volume, as well as a general index. The introduction to the work by Count Montgelas and Professor Schücking has been translated by Louis Moreau, translator in the Ministry of Foreign Affairs.

This French version of the Kautsky documents will be followed soon by an English rendering along similar lines, to be published in connection with other German and Austrian war documents by the Carnegie Endowment for International Peace.

EDWIN H. ZEYDEL.

Heinrich Lammasch. Seine Aufzeichnungen, sein Wirken und seine Politik.

Edited by Marga Lammasch and Hans Sperl. With contributions by Hermann Bahr, author, Salzburg; Prof. Friedrich Foerster, Berne; Prof. George D. Herron, United States; Marga Lammasch, of the League of Nations Bureau, Geneva; Prof. Otfried Nippold, President of the Supreme Court of Sarrelouis; Prof. Josef Redlich, former minister of finance, Vienna; Prof. Theodor Rittler, Innsbruck; Jonkheer A. F. de Savornin-Lohman, former minister of the interior, The Hague; President Franz Schumacher, Innsbruck; and Prof. Hans Sperl, Vienna; with a portrait of Heinrich Lammasch. Vienna and Leipzig: Franz Deuticke. 1922. pp. iv, 228.

When Heinrich Lammasch died on January 7, 1920, his native Austria and the world in general lost one of the ablest scholars in the field of international law, one of the firmest believers in the judicial settlement of international disputes and a judge experienced in dealing most impartially with great and important differences between the nations.

The memorial volume on Lammasch which has now appeared is an interesting and valuable collection of appreciative and reminiscent articles by friends of the deceased scholar, dealing with various aspects of his great life work, and of posthumous papers prepared for publication by Lammasch just before his death.

A short foreword by Prof. Sperl of Vienna is followed by a sketch on Heinrich Lammasch as a man, written by his daughter Marga. It depicts him as the reserved, retiring scholar that he was, unusually amiable, mild-mannered and unassuming, although an ardent champion of his beliefs, whose critical, sceptical mind was only mellowed by the years. Her close association with and great attachment to the man enable the writer to give us a most intimate picture of her distinguished father's character. This picture is well supplemented by what Hermann Bahr, the Austrian dramatist, says about Lammasch as a lover of real peace, in contradistinction to the faint-hearted pacifist.

These articles are followed by five papers mostly of a general nature from the pen of Lammasch himself. The first one deals with the writer's life during the period from 1899 to 1905 and covers the first Hague Conference of 1899, Lammasch's call to the Austrian House of Lords, and the Venezuela and Mascat arbitrations, in which he played a prominent part. The paper contains very valuable personal reminiscences and incisive character sketches of the leading men of the first Conference. Of the members of the American delegation to this Conference, the writer admires especially Mr. Holls. A second paper on the second Hague Conference of 1907 supplements the author's article on the same subject in Niemeyer's *Zeitschrift für internationales Recht*, vol. 26, p. 153 ff. and gives an illuminating insight into the Austrian preparations for the Conference and the inside history of the part

played by the Austrian delegation during the Conference. Lammasch is frank in his exposition. He does not hesitate to speak of the friction caused in his own delegation by his opposition to the German-Austrian attitude, in particular the spirit of animosity harbored by Count Merey against the United States. He mentions also the unfortunate impression created by the Conference in neglecting to appoint an American as president of one of the commissions and he gives a critical estimate of the personnel of the various delegations. On the whole, he speaks disparagingly of the American delegation, chiding Mr. Choate for his ignorance of French and Mr. Porter because of his alleged incompetency for carrying out his mission in the Conference. But he praises Mr. Hill for his hospitality and says of the technical delegate Dr. Scott: "In many respects, just as in 1899, the soul of the American delegation was that member who had no vote and was not a plenipotentiary, namely Professor James Brown Scott, as in 1899 Mr. Holls; he was just as agile and quicksilverish as the delegation's head, Choate, was cumbersome. Toward the outside, surely, he was the most prominent member."

Another article by Lammasch dealing with the arbitral awards of The Hague gives the historian considerable data, mostly of a personal nature, on the Venezuela, Mascat and Orinoco cases, adding to the material which is already available on the subject. A paper on Archduke Franz Ferdinand discloses the personal relations of Lammasch to the assassinated heir apparent to the throne of the Monarchy, and a final article describes the interesting but fruitless efforts of Lammasch to secure peace through President Wilson in the late winter of 1917-18 by means of conversations with the American publicist George D. Herron, living in self-exile in Geneva. This incident is also treated by Herron himself in an English article.

The five essays of Lammasch are followed by additional papers of friends. Jonkheer A. F. de Savornin-Lohman writes in terms of the highest praise on Lammasch as president of the courts of arbitration in the Mascat and North Atlantic Fisheries cases. Prof. Rittler of Innsbruck deals with Lammasch as a teacher of criminal law, his chosen field, in which he excelled particularly. Otfried Nippold has contributed a lengthy appreciative article on Lammasch as a scholar in international law and an advocate of genuine peace. The last and most tragic part of Lammasch's life, his short incumbency as prime minister of Austria in the critical autumn days of 1918, which presents the pathetic spectacle of Lammasch being entrusted with the destiny of his country after it had gone to ruin precisely because the theories which he had advocated all his life had been ignored, and his short-lived participation in the negotiations at St. Germain as a member of the Austrian peace delegation, is depicted by Prof. Redlich and Franz Schumacher, respectively.

A paper by Prof. Sperl on Lammasch in academic life, reminiscences by Prof. Foerster and a short note by Marga Lammasch on her father's last days conclude the volume.

There is a useful bibliography of Prof. Lammash's complete works, books as well as articles, covering eight pages. The volume, attractively gotten up and containing a good portrait of Lammash, is worthy of the memory of the most distinguished Austrian jurist of the present age.

EDWIN H. ZEYDEL.

An Introduction to the Study of International Organization. By Pitman B. Potter, Ph.D. New York: The Century Company. 1922. p. 647. \$4.00.

This contribution to the literature on international law of Professor Potter is most valuable and interesting. There is no subject that has a greater importance in contemporary international relations than the question of international organization. In starting his analysis, the author gives a short but concise review of historical events and of the gradual development of the modern state-system (Part I) and diplomacy (Part II). The student of international relations can get in these chapters a fair idea of the evolution of diplomatic intercourse, of its organization and practice and a well-thought out criticism of the modern system. In Part III and IV the author describes the contemporary treaty system and international arbitration. A slight criticism might be made, however, about Chapter XIII. Good offices and mediation are not very clearly defined, nor distinguished from one another, and thus will be apt to confound any student who is not sufficiently well-equipped in international law. The history of the Hague system and the following Part V (on international administration) are, on the contrary, lucid and very satisfactory, giving a vivid picture of the whole matter.

In Part V Professor Potter endeavors to sketch the history of international conferences, including in his narrative the most recent events concerning the Versailles Treaty and winding it up with a chapter on the problem of peace and its relation to international organization (XXII). These three chapters and the following Part VII (on international federation) are probably the most valuable part of the book. There is much new material in them and many of the questions are discussed in such details as never before. The author does not omit to mention the juristic theories concerning the idea of a possible international federation. Two suggestions, however, occur to the reviewer in this respect: First, that the author did not pay sufficient attention to the recent developments in the British Empire; the history of the Imperial Conferences of Great Britain gives invaluable material for the study of any possible federations, national or international. And secondly, that he somewhat underrates the former influence of the very pernicious formula of "*Rebus sic stantibus*," which was continually undermining the agreements of the nineteenth century.

The concluding two chapters (XXVIII and XXIX) are devoted to the League of Nations and the organization of 1921. Perhaps on account of

the events being too recent, the author's narrative becomes a little too sketchy and some of his statements do not find sufficient corroboration in the present-day conditions of Europe. Finally, in a long appendix, Professor Potter gives the necessary documents, illustrating his text and very useful to the student of international relations.

There could possibly be made one general remark concerning the volume of Professor Potter. It seems mainly not very well balanced in the distribution of material which he analyzes and interprets. There are two distinct parts in his work,—treaties and international relations in the technical meaning of the term, and the question of federation or organization. Both are equally important, but likewise complicated. If they are discussed parallel, as in the present volume, one of them is apt to suffer, and this is what seems to have happened to the first one, because the second one (international organization) has so evidently the sympathy of the author. This criticism however is in no way meant to detract from the very great merits of the work in general. The volume is most stimulating and inspiring, being a decided step forward in the realization of our ideal of a future international organization standing for peace and friendship among the nations of the world.

S. A. KORFF.

The American Philosophy of Government. By Alpheus Henry Snow. New York: G. P. Putnam's Sons. 1921. pp. 485.

In addition to the valuable report prepared by Mr. Snow for the Department of State and recently published under the title of *The Question of Aborigines in the Law and Practice of Nations*, a further volume of collected papers is now forthcoming which must enhance the esteem in which his name will be held by students of international law. The papers included in the present volume cover a period of some fifteen years, and deal not so much with the American philosophy of government as an internal question of domestic administration, as with the problem of adjusting American political ideals to the necessary relations of international life.

A single thread of principle runs through the opinions of the author on the various subjects treated. The primary object of all government, Mr. Snow holds, is the protection of the fundamental rights of the citizen. These rights are not peculiar to citizens of the United States; they are universal and "unalienable"; they are the law "made by human society as an organized unitary community" (p. 23); and in consequence the American philosophy of government is international as well as national. The protection of individual rights is to be secured by establishing a government of limited constitutional powers, bound by a higher law than its own immediate will, and so checked and balanced in the distribution of its powers as to be practically incapable of tyranny.

The principles constituting the American philosophy of government must, the author holds, be made in like manner the foundation of whatever international institutions may be established between the nations for the regulation of their mutual relations. A cooperative union of nations is, indeed, desirable, but the government which it sets up must be of a limited character, guaranteed by its very organization against the possibility of exercising arbitrary power. As a model for such a "cooperative union," the author points to the Pan American Union and shows how a similar organization might be adapted to the larger union of the nations. The government of the union might take the form of a "directorate," whose duty it would be to give counsel to the nations by investigating facts and proposing awards, leaving it to the voluntary act of the separate nations to put the counsel given into effect. Enlightened self-interest, seen to be the interest of the community of nations as a whole, would replace compulsion as a factor in international government.

Judging it by this test, the author felt it necessary to reject the League of Nations as a solution of the problem of international union. Until the American philosophy of individual rights was more generally accepted it was unwise, and indeed unconstitutional, for the United States to enter the new "body politic and corporate" which would have a "political and legal personality distinct from that of the United States" (p. 157). Moreover, the Covenant failed to impose upon the organization it created the restraints necessary to substitute justice and law for force as a factor in international relations. Before there could be any "general obligatory union of States" there was still much work for political scientists in all countries, in introducing into the constitutions of their states the checks needed to bring the foreign offices of their governments under more direct control.

While there is a note of idealism—a belief in law and reason as the agencies of international progress—in the position taken by Mr. Snow with which the reviewer is heartily in accord it is impossible at times to follow him in his abstract theory of individual rights and in his belief in the superior wisdom and justice of the United States. The record of American foreign policy does not seem to justify the statement that it is "the failure of other nations to accept our philosophy and system" which particularly stands in the way of international arbitration (p. 31); nor does it appear that "the wars which the United States has fought have all been for the purpose of protecting the fundamental rights of the individual and maintaining the nation as the guardian of those rights" (p. 33). The political ideals of the United States have doubtless contributed largely to the progress of good government in the world; they have not always been followed in its own domestic and foreign policies.

C. G. FENWICK.

Manuel de Droit International Privé. By André Weiss. 8th ed. Paris: Librairie de la Société du Recueil Sirey. 1920. pp. xxviii, 712.

The public has set its seal of approval upon this work by requiring eight editions within the space of a generation, and since, as the author tells us, this edition does not differ noticeably from the preceding one, it is not necessary to enter into a detailed consideration of the contents. The primary purpose of the manual is to discuss the theory of the conflict of laws, but Professor Weiss, to meet the requirements of the French educational program, has also included the subjects of nationality and the rights of aliens, which, as he truly remarks, constitute a natural introduction.

In a short preliminary chapter the principles of international law are stated with truly French clarity and precision. The conflicts which it is the purpose of international law to settle may be divided as regards the interests concerned into two classes. The first of these comprises the conflicts which relate to matters of general interest. They fall within the province of public (international) law. In such differences, Professor Weiss explains, the interests of the state as a Power—or international person—are at stake, and the state acts in its own name. In controversies of the second class we have to do with the interests of individuals, and the state intervenes only as the guardian of the private interests of its nationals. Since two sovereignties are here in conflict, just as in the preceding cases, we have to do with an international controversy, only the interests affected are not the same and this difference corresponds to the difference between the two important branches of international law: that of Public and that of Private International Law. Accordingly, Professor Weiss defines Private International Law to be “the collection of rules applied to the settlement of conflicts which arise between two sovereignties, either in regard to their respective laws governing individual interests (*lois privées*) or in regard to the individual interests of their nationals” (p. xxv).

Clear as this definition appears at first sight, the author confesses that “nothing is more difficult than to determine its exact application” (p. xxvi). For instance, he does not, as he explains, entirely agree with the late Professor Renault that extradition pertains to public rather than to private international law, but he essays to avoid this difficulty by classing extradition under a separate heading entitled International Criminal Law (*Droit international criminel*). May not this difficulty of application be due to a defect in the basic conception and definition of private international law? When these controversies of private international law are regulated by treaty stipulations do they not pass forthwith into the realm of public international law? In the case of interposition for any denial of the rights of a state's nationals is not the interest primarily individual? The answer to these questions must be left to the specialists who are thoroughly conversant with all the intricacies of the matter, but the student of international rela-

tions may perhaps be permitted to question whether they have as yet supplied him with a satisfactory definition and system of classification.

Be that as it may, no one is better qualified to speak with authority than M. Weiss, who has been for so many years professor of public and private international law at the University of Paris, who is a member of the Permanent Court of Arbitration at The Hague, and who has through his position of legal advisor to the French Foreign Office kept in the closest touch with practical affairs.

ELLERY C. STOWELL.

An Introduction to the Problem of Government. By Westel W. Willoughby and Lindsay Rogers. Garden City, N. Y., and Toronto: Doubleday, Page & Co. 1921. pp. x, 545. Index.

This is a joint work by the Professor of Political Science in the Johns Hopkins University and the Associate Professor of Government in Columbia University. The purpose of the volume, as stated by the authors, is to introduce the reader to the problems of constitutional and popular government. This they undertake to do, not by simply furnishing an outline of the manner in which modern governments are organized, but by giving an insight into the principles behind the facts.

Numerous and copious footnotes contain summary treatment of phases of the subject which do not come within the full treatment of the text, and a list of topics for further investigation appended to each chapter directs the student who would know more of the subject after reading this introduction.

The twenty-four chapters of text are followed by an appendix of illustrative documents, including the Overman Act of May 20, 1918, authorizing the President to redistribute the functions of the executive departments; a reprint from the *Literary Digest* of October 30, 1920 on "Lobbies and Lobbyists in Washington"; Rules for the operation of Proportional Representation drafted when the British Reform Act of 1918 was under consideration; the Budget and Accounting Act of 1921; and the Constitution of Japan.

GEORGE A. FINCH.

PERIODICAL LITERATURE ON INTERNATIONAL LAW SUBJECTS.¹

Abbreviations: American Bar Association Journal (*Amer. Bar Ass. J.*); American Law Review (*Amer. L. R.*); American Political Science Review (*Amer. Pol. Sc. R.*); Archiv des öffentlichen Rechts (*Arch. d. öffentl. Rechts*); British Year Book (*Br. Y. Book*); Canadian Law Times (*Can. L. T.*); Harvard Law Review (*Harvard L. R.*); Hispanic American Historical Review (*Hispanic Amer. Hist. R.*); Journal of American Institute of Criminal Law and Criminology (*J. Crim. L.*); Juridical Review (*Jur. R.*); North American Review (*N. Amer. R.*); Revue de Droit International et de Législation Comparée (*R. Dr. Inter. et Légis. Comp.*); Revue de Droit International Privé et de Droit Penal International (*R. Dr. Inter. Privé et Dr. Penal Inter.*); Revue Générale de Droit International Public (*R. Gen. Dr. Inter. Public*); Revue Internationale du Droit Maritime (*R. Inter. Dr. Maritime*); University of Pennsylvania Law Review (*Pa. U. L. R.*); Yale Law Journal (*Yale L. J.*); Zeitschrift für Internationales Recht (*Zeitschrift für Inter. Recht*).

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¹ (Limited to articles published in the periodicals exchanged with the American Journal of International Law.)

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HOPE K. THOMPSON.

THE ARMISTICES ¹

BY GENERAL TASKER H. BLISS

American Military Representative with the Supreme War Council

This work was published early in the course of the Paris Peace Conference. Even at that time its title was somewhat misleading. Practically all of the so-called secret documents contained in it, including the extracts from the proceedings of the Allied Council which adopted the armistice terms, had already been published in every country that took any interest in the war. A considerable part of the work is devoted to the activities of the *Socialistes*, the *Syndicalistes* and the *Internationalistes* towards effecting a peace before the war should be fought to a conclusion; as well as to the so-called "affaires" of Caillaux, Bolo Pasha, Prince Sixte de Parme, *et al.*, based upon the current publications of the press. These are probably what the author means by the "Négotiations Secrètes."

That part of the work which relates to the armistices consists, mainly, of the proceedings, then already published, of the Allied Council at Versailles, October 31–November 4, 1918. This Allied Council consisted of the Supreme War Council, to which were attached representatives, designated *ad hoc*, of Japan and of several of the smaller allied countries. It is important to remember that the Supreme War Council itself consisted solely of the political representatives of Great Britain, France, Italy and the United States, to whom were attached, but not as voting members of the Council, a military representative of each of those four countries, as an adviser for his own government.

The author of this work gives the impression that the above-mentioned Allied Council drew up the terms of the armistices. This is not the fact. Its official proceedings show that when it met it had before it drafts for its consideration. Its sole function was to trim the edges and round-off the corners, in doing which there was an opportunity to consider points raised by the smaller Powers that had not been represented in the preparation of the drafts. Nor does the author discuss the reasons or motives that governed the consideration of these drafts, by paragraphs or in their entirety. He fails to note that this Council adopted not four but two armistices, because two had been entered upon before the Council met. Nor does he note the significance of prior consideration being given to the armistice with Austria-Hungary. This prior consideration was due to the fact that the

¹ *Mermeiz: Les Négociations Secrètes et les Quatre Armistices, avec Pièces Justificatives.* 5th edition. Paris: 1921. Librairie Ollendorff. Pp. 355.

Allies knew that Austria-Hungary would accept any conditions for an armistice. The armistice with this Power was, therefore, approved first and sent to General Diaz to put into effect. One of its articles provided that,

"The Allies shall have the right of free movement over all roads, rail and waterways, in Austro-Hungarian territory, and of the use of the necessary Austrian and Hungarian means of transportation.

"The Armies of the Allied and Associated Powers *shall occupy such strategic points in Austria-Hungary* at such times as they may deem necessary to enable them to conduct military operations or to maintain order."

The underscored words should be noted in connection with subsequent remarks of the reviewer on the armistice with Germany. Suffice it to say here that a plan of further military operations against Germany, should such be necessary, had already been prepared in anticipation of the above condition in the Austrian armistice and to meet the extreme contingency of Germany refusing an armistice after she had herself asked for it. This plan was submitted to the Supreme War Council and approved by it late in the day of November 4, 1918, in its

Resolutions in regard to operations against Germany through Austria

The Supreme War Council agrees to the following resolutions:

1. To approve the plan of operations against Germany through Austria proposed by Marshal Foch, General Bliss, General Wilson and General di Robilant.¹

2. That Marshal Foch shall have the supreme strategical direction of operations against Germany on all fronts, including the Southern and Eastern.

3. That the Military Advisers of the British, French, Italian and United States Governments shall immediately examine the following questions:

"(a) The possibility of taking immediate steps to send a force, which shall include the Czecho-Slovak forces on the French and Italian fronts, to Bohemia and Galicia, with the following objects:

"To organize these countries against invasion by Germany;

"To prevent the export to Germany of oil, coal, or any other material, and to render these available to the Allied forces;

"To establish aerodromes for the purpose of bombing Germany.

"(b) The immediate cooperation of General Franchet d'Espèray² in these objects."

In the opinion of the reviewer, the conditions of the armistice with Austria, which showed Germany that such a plan of operations was on the cards, would have obliged the latter Power to accept any conditions that might have been proposed in the armistice with it. For reasons to be given, he believes that had the proper conditions been imposed, real peace would have been brought much nearer and Europe at this moment would be more advanced in the process of recovery from the war.

¹ Committee appointed by the Supreme War Council to prepare a plan of operations.

² Commander-in-chief of the Army of the East, who had operated from his base in Macedonia and had already concluded armistices with Bulgaria and Hungary.

The fact is that, with the exception of the people who made them and those most directly affected by them, no one is or has been interested in any of the armistices except the one with Germany. After that one went into effect, after the German Government had utterly collapsed and with it all possibility of military effort, some people, who had cordially approved the armistice but who now for the first time appreciated the military helplessness of their enemy, began to ask the questions, Why were not the terms of the armistice different? Why was it made at all? Why didn't the Allies march to Berlin? Even then, although these men knew and then said that had it not been for the intervention of the United States in the war the Allies would have been defeated, there were some who, at first ignorantly and then maliciously, attributed some sinister purpose to the United States, a desire to rob the Allies of the fruits of the common victory. At various times since then this idea has been inculcated in various quarters, sometimes in ignorance, generally in malice. Recently, when the falsehood was moribund from inanition, it has been revived by an alleged interview, the authenticity of which has been denied, with a distinguished member of the literary world, and now widely circulated. He is quoted as saying,

“America had forced the Allies into making peace at the first opportunity instead of insisting upon finishing in Berlin. America quit the day of the Armistice without waiting to see the thing through.

Although these statements are not to be attributed to the recently alleged source, they are the exact charges notoriously and frequently made by many writers and speakers. It is proper, therefore, to examine into their truth.

Passing for the moment the allegation in the first of the above sentences, what is “the thing,” mentioned in the second, that America did not wait to see through? Was there anything left to “see through” except the conclusion of formal peace? Did not America appoint her peace delegates before any other great Power did? Did they not arrive in Paris before any others were appointed, before even those of the French were announced? And after the consideration of the terms of peace began, was it America that caused delay “in seeing the thing through?” Or was it the passionate and selfish greed of European Powers who, dazzled by the enormity of the loot lying before them, refused to make peace with the enemy until they could settle their quarrels among themselves and decide on the distribution of this loot? Who refused to say, as they could have said within the first seven days, “Germany must surrender to the Allied and Associated Powers her battleships and her colonies,” but in their distrust of each other waited until they could decide which Allies could get what proportion of battleships and colonies?

Now, what of the “insisting upon finishing in Berlin”? That suggestion comes late now. There was a time when the Allied Governments could have

insisted on this, had they so desired. When the Government of the United States sent its note of October 23, 1918, saying that,

"The President has, therefore, transmitted his correspondence with the present German authorities to the Governments with which the Government of the United States is associated as a belligerent, with the suggestion that, *if those Governments are disposed to effect peace* upon the terms and principles indicated, their military advisers and the military advisers of the United States be asked to submit to the Governments associated against Germany the necessary terms of such an armistice as will fully protect the interests of the peoples involved and ensure to the associated Governments the unrestricted power to safeguard and enforce the details of the peace to which the German Government has agreed, provided they deem such an armistice possible from the military point of view,"

—then was the time for the Allied Governments, or any one of them, to say "No, we are not disposed to effect peace upon the terms and principles indicated" and "we shall not ask our advisers to submit for our approval the necessary terms of such an armistice nor of any armistice." As a matter of fact, the Allies and Associated Powers immediately consulted their military advisers. These advisers were bound to advise such terms as, in their respective judgments, would not only guarantee against a resumption of hostilities during the peace proceedings but ensure also the successful imposition of the peace terms. Based on their advice, the political representatives drew up the exact terms and by their note of November 4, 1918, the three Prime Ministers informed the Government of the United States that they would discuss peace on the acceptance by Germany of these terms. Does anyone assert that there is a single one of these military terms that was imposed by the United States? Or that the Government suggested the change of an iota after the three Prime Ministers had accepted them? And after that acceptance, on prolonged and detailed scrutiny and discussion, and after that declaration by the three Prime Ministers, can there be anything more silly, groundless and malignant than the allegation that America forced the Allies into making peace at the first opportunity instead of insisting upon finishing in Berlin.

Probably most people believe that the first consideration by the European Allies of armistice terms as preliminary to peace was given after the communication of the United States' note of October 23, 1918. That, however, is not the case; and many citizens of those countries will be interested to know the steps taken to that end by their governments before that of the United States had received the conditions of the armistice agreed upon by them on November 4, 1918.

The first German note to the United States was announced in the Reichstag on October 5th, the note having been sent the night before through Berne and reaching Washington on October 6th. On October 5th the Prime Ministers of Great Britain, France and Italy met in Paris. At a

meeting on October 6th they agreed upon certain principles for the basis of an armistice. At nine o'clock on the night of October 7th the American military representative received from them the following document:

The conference of Ministers at a meeting held on 7th October 1918, agreed to refer to the Military Representatives at Versailles, with whom shall be associated representatives of the American, British, French and Italian Navies, the consideration of the terms of an armistice with Germany and Austria, on the basis of the following principles *accepted on the previous day*.

1. Total evacuation, by the enemy, of France, Belgium, Luxemburg and Italy;
2. The Germans to retire behind the Rhine into Germany;
3. Alsace-Lorraine to be evacuated by German troops without occupation by the Allies;
4. The same conditions to apply to the Trentino and Istria;
5. Servia and Montenegro to be evacuated by the enemy;
6. Evacuation of the Caucasus;
7. Immediate steps to be taken for the evacuation of all territory belonging to Russia and Roumania before the war.
8. Immediate cessation of submarine warfare.

Unnumbered Paragraph. (It was also agreed that the Allied blockade should not be raised.)

The foregoing note was accompanied by a request that the military representatives, with the associates indicated in the note, meet for its consideration at 9.15 o'clock on the following morning, October 8th. The American representative at once decided not to participate in the discussion and recommendation of armistice terms thus requested. In the absence of official information he took note of the fact that it was commonly believed in every Allied capital in Europe that a German note on this subject was then pending before the Government at Washington. He could take no part in the discussion of it without specific instructions. He immediately cabled the note of the Ministers to Washington with his proposed action. At the same time he invited attention to par. 2 of the note, under which, if not modified, the Germans could retire to a strong position behind the Rhine with their army, armament and supplies intact. Accordingly, in the action taken at the meeting of military and naval representatives on the morning of October 8th there was no American participation. The following is the document that was then drawn up and submitted to the three Prime Ministers:

The Military Representatives and Naval Representatives meeting together on October 8th, in accordance with the Resolution taken by the Conference of Ministers at their meeting held on 7th October, 1918, are of opinion that the first essential of an armistice is the disarmament of the enemy, under the control of the Allies.

This principle having been established, the conditions specified by the Ministers at their meeting held on 7th October, require from a military point of view to be supplemented as follows:

1. Total and immediate evacuation, by the enemy, of France, Belgium, Luxemburg, and Italy on the following conditions:
 - (a) Immediate re-occupation by Allied troops of the territories so evacuated;
 - (b) Immediate repatriation of the civil population of these regions interned in enemy country;

(c) No "sabotage," looting or fresh requisitions by enemy forces;
(d) Surrender of all arms and munitions of war and supplies between the present front and the left bank of the Rhine;

2. Germans to retire behind the Rhine into Germany.

3. Alsace-Lorraine to be evacuated by German troops without occupation by the Allies, with the exception stated in Clause 18 below.

It is understood that the Allies will not evacuate the territory in their occupation.

4. The same conditions apply to the territory included between the Italian frontier and a line passing through the Upper Adige, the Pusterthal as far as Tobloch, the Carnic Alps, the Tarvis and the meridian from Monte Nero, cutting the sea near the mouth of the Voloska (see Map of the Italian Military Geographical Institute 1 over 500,000).

5. Serbia, Montenegro and Albania to be evacuated by the enemy—under similar conditions to those stated in Clause 1.

6. Evacuation of the Caucasus by the troops of Central Powers.

7. Immediate steps to be taken for the evacuation of all territory belonging to Russia and Roumania before the war.

8. Prisoners in enemy hands to be returned to Allied Armies without reciprocity in the shortest possible time. Prisoners taken from the Armies of the Central Powers to be employed for the reparation of the wilful damage done in the occupied areas by the enemy, and for the restoration of the areas.

9. All enemy surface ships (including Monitors, River craft, etc.), to withdraw to Naval Bases specified by the Allies and to remain there during the Armistice.

10. Submarine warfare to cease immediately on the signature of the Armistice. 60 submarines of types to be specified shall proceed at once to specified Allied Ports and stay there during the Armistice. Submarines operating in the North Sea and Atlantic shall not enter the Mediterranean.

11. Enemy Naval air forces to be concentrated in bases specified by the Allies and there remain during the Armistice.

12. Enemy to reveal position of all his mines outside territorial waters. Allies to have the right to sweep such mines at their own convenience.

13. Enemy to evacuate Belgium and Italian coast immediately, leaving behind all Naval war stores and equipment.

14. The Austro-Hungarian Navy to evacuate all ports in the Adriatic occupied by them outside national territory.

15. The Black Sea Ports to be immediately evacuated and warships and material seized in them by the enemy delivered to the allies.

16. No material destruction to be permitted before evacuation.

17. Present blockade conditions to remain unchanged. All enemy merchant ships found at sea remain subject to capture.

18. In stating their terms as above, the Allied Governments can not lose sight of the fact that the Government of Germany is in a position peculiar among the nations of Europe in that its word can not be believed, and that it denies any obligation of honor. It is necessary, therefore, to demand from Germany material guarantees on a scale which will serve the purpose aimed at by a signed agreement in cases amongst ordinary civilized nations. In those circumstances, the Allied Governments demand that: within 48 hours:

1st. The fortresses of Metz, Thionville, Strassburg, Neu Breisach and the town and fortifications of Lille to be surrendered to the Allied Commander-in-Chief.

2nd. The surrender of Heligoland to the Allied Naval Commander-in-Chief of the North Sea.

19. All the above measures, with the exception of those specially mentioned in paragraph 18, to be executed in the shortest possible time, which it would appear should not exceed three or four weeks.

This document was at once cabled *in extenso* to Washington. The draft intended for submission to the Prime Ministers was brought to the American military representative with request that he reconsider his decision and sign it. This he declined to do in the absence of instructions from his government. And, to the document intended for these Ministers, he attached a note addressed to them giving his reasons for not signing it. Personally, he had no criticism of the general tenor of the document and he, of course, accepted the establishment of the essential principle of disarmament and the fixing of guarantees.

This document of October 8, 1918, undoubtedly represented the then Allied military and naval view and that of the great majority of their political men. What caused its preparation? The invariable rule of procedure of the Supreme War Council was that no military measure (and an armistice is essentially such) would be considered by it unless the four military representatives were unanimous in recommending it. If they were unanimous, the measure was submitted to the heads of the four governments. If any one of the latter did not concur it failed. Therefore, the action of October 7th and 8th was not that of the Supreme War Council but that of the three Prime Ministers. What was the motive for the proceedings of those two days? This can only be inferred, because no further action was then taken; but it would seem that one or both of only two reasons can be assigned. One is this: it was known that the question was then pending in some form in Washington; it was not known what attitude towards it would be there taken; it was apprehended that some committal might be made adverse to Allied wishes or interests. If this were the reason, the Allies, who knew that this action would be immediately cabled in full to Washington, would also know that in this indirect way Washington would be made aware that they had views of their own on the subject of an armistice. The other reason may be that the Allies wished to be tentatively prepared by studies of their own in case notes should be addressed to them by Germany as had been done to the United States.

The essential fact to note is that the document of October 8th presented the Allied view, in the preparation of which no American military or naval or political representative had any part whatever.

From October 8th events, military and political, moved rapidly. The German notes of October 8th, 12th and 20th, and the American notes of October 8th, 14th and 23rd, were exchanged. This latter note of October 23rd is the one which placed, without limitation, the decision of the question whether there should, or should not, be an armistice in the discretion and judgment of the *Allied Powers in Europe*.

They having decided in favor of an armistice, the political representatives of the three principal European Allies, associated with that of the United States, began the study of armistice terms on October 26th. A reasonable construction of the words of the President's letter which read

"that, if those [Allied] Governments are disposed to effect peace upon the terms and principles indicated, their military advisers and the military advisers of the United States be asked to submit to the Governments associated against Germany the necessary terms of such an armistice as will," etc.,

would have suggested the formation of a military committee (including, of course, naval representatives) to prepare a joint draft for submission to the political representatives of the four governments concerned. This would have resulted in full and frank discussion of the varying views of the military and naval advisers and, as in countless previous cases, would undoubtedly have resulted in prompt and harmonious agreement. But the course was followed of calling upon these advisers individually and singly for their views. There was no opportunity for discussion among themselves, such as would have had to be the case were they required to draw up a joint draft, scrutinizing and discussing every word and punctuation point before agreement.

When the American military representative with the Supreme War Council was requested to submit his views in writing to the Council of Ministers he did so guided by the following facts:

1. The unanimous recommendation of the Allied military and naval representatives in their document of October 8th in which they accepted disarmament as the first essential of the armistice;
2. His answer to cabled instructions from Washington dated October 21st for his views, in which he stated his belief that the armistice terms should be limited, as nearly as could be, to the complete disarmament and demobilization of all enemy forces on land and sea, in the belief that peace terms would be immediately thereafter imposed.
3. His unofficial knowledge of a document embodying proposed armistice terms which had already been submitted to the Council and which was commonly supposed to be receiving favorable consideration.
4. His unofficial knowledge of the proposed term in the Austrian armistice, hereinbefore quoted.

As to the first consideration above, he was surprised to find a disposition to depart from the former Allied belief that general disarmament of the enemy was an essential condition.

As to the third consideration above, relating to the document supposed to be viewed with favor by the Council of Ministers, he noted that it was proposed to take from the Germans, as a condition for granting them an armistice, approximately one-half of their machine-guns, one-half of their artillery, and other articles of fighting equipment in varying proportions to an assumed total. What would be the result? Consider the Western Front alone:

1. It left the *organization* of von Hindenburg's army of 4,500,000 men absolutely intact from its commander-in-chief to the private in the ranks.

2. It left the infantry organization and *armament*, including reserve arms and munitions absolutely intact.

3. It left them, admittedly, with some half of their artillery and one-half of their machine guns. And other fighting appliances in similar proportion.

4. It permitted von Hindenburg to withdraw his army of, perhaps, 4,500,000 to a selected strategic point, provided only that this point should be from thirty to forty kilometers east of the Rhine.

5. There was the possibility in unknown degree that this army might promptly re-equip itself with the lost material taken from it by the armistice.

6. And what was true of von Hindenburg's army was true, to a greater or less degree, of the German armies in other theatres of the war.

7. In short, the proposed terms not merely permitted but required Germany to concentrate *all* her forces of possibly 8,000,000 thoroughly trained soldiers—trained in the best of all schools, war itself—within her own territory in selected positions for national defense. Instead of taking advantage of the depressed morale of these men who knew that they were defeated on foreign soil, it was proposed to encourage a revival of their morale by the consciousness that they were concentrated in their own country where they would fight not for aggression but for home defense.

On consulting officials who had prepared these terms, the American military representative at Versailles was informed that there was at that time known with accuracy the numbers of weapons of all kinds then in the hands of German troops and in reserve and that, with the surrender of what was demanded of them, they could not re-equip themselves. This the American representative denied. He denied that they knew with sufficient accuracy the amount of captured material which the Germans could use in last resort though they, like the Allies, made no use of it as long as they had enough of their own equipment. He denied that they sufficiently knew the capacity of German plants to produce new material, such as machine guns and field artillery, even if the armistice was of relatively short duration. He denied that they knew whether, for example, even if they were certain the 30,000 machine guns was one-half of the German total, the loss of them would reduce the German total one-half below that of the Allies.

He, therefore, in compliance with the request of the Council of Ministers, submitted a memorandum. In this the opinion was stated that there should be three phases in the procedure to be followed,

“At the end of a great world-war like the present one, in which it may be assumed that one party is completely beaten, and which will be followed by radical changes in world-conditions:

"a) A *complete surrender* of the beaten party under such armistice conditions as will guarantee against any possible resumption of hostilities by it;

"b) A conference to determine and enforce the conditions of peace with the beaten party; and

"c) A conference (perhaps the same as above) to determine and enforce such changes in world-conditions,—incidental to the war but not necessarily forming part of the terms of peace,—as are agreed upon as vital for the orderly progress of civilization and the continued peace of the world."

After giving reasons for the belief that certain of the proposed conditions were not sufficient, the following propositions were submitted:

"First, that the associated powers demand complete military disarmament and demobilization of the active land and naval forces of the enemy, leaving only such interior guards as the associated powers agree upon as necessary for the preservation of order in the home territory of the enemy. This of itself means the evacuation by disarmed and not by armed or partly armed men. The army thus disarmed cannot fight, and demobilized can not be reassembled for the purposes of this war.

"Second, that the associated powers notify the enemy that there will be no relaxation in their war aims but that these will be subject to full and reasonable discussion between the nations associated in the war; and that, even though the enemy himself may be heard on some of these matters he must submit to whatever the associated powers finally agree upon as being proper to demand for the present and for the future peace of the world."

It was, of course, intended that, should these principles be accepted as the basis of an armistice, a military and naval committee would prepare the exact details. However, these principles were not accepted. The terms already before them were, with more or less modification, accepted in the draft prepared by the Ministers.

The drafts thus prepared were submitted to the Allied Council and considered at its meetings from October 31st to November 4th. It is repeated that these drafts were not prepared by the Ministers after discussion solely among themselves and unaided. They called, from time to time, for such assistance and advice as they desired, from military, naval and civilian advisers. The drafts were, however, in no sense the result of the efforts of any duly appointed body of military or naval experts. In the discussions of the Allied Council practically no change was made in the original purely military and naval terms, except to correct a few obvious and inadvertent omissions. The military men had already had their day in court and there was no further consideration given to basic principles. They were approved on November 4, 1918, and transmitted to Washington with the following declaration of the Prime Ministers:

"The Allied Governments [which do not include the United States] have given careful consideration to the correspondence which has passed

between the President of the United States and the German Government. Subject to the qualifications which follow they *declare their willingness to make peace* with the government of Germany," etc., etc.

The qualifications relate to a reservation which they made as to the interpretation to be put on the meaning of the phrase "the freedom of the seas" when that subject should be discussed in a peace conference; and on the meaning of the phrase "invaded territories must be restored as well as evacuated and freed." This was communicated to Germany on November 5th; the terms were accepted; the document was signed by both parties on November 11th; and the armistice became a closed incident save in so far as relates to its practical application.

The official records do not show that any one knew who was the author of any proposition, except the emendations or the non-military clauses that were introduced during the discussion of the Allied Council from October 31st to November 4th. Of course the Ministers knew, but they have left no records of their deliberations. With the exception of them, no one could say "This or that military or naval clause was introduced on the advice of this or that adviser." When dissatisfaction began to be felt in any quarter with the terms of the armistice or with the fact that there was any armistice at all, various persons have attempted to fix the author. Just now we are not concerned in showing who made the armistice—the fact and the terms of the fact—but in showing who did not make it.

The origin of the armistice is thus perfectly plain. The first German note was received at the Legation of Switzerland in Washington "late this afternoon," as the Chargé d'Affaires of that legation says in his letter of transmittal dated October 6th. On the same day, in Paris, the Prime Ministers of Great Britain, France and Germany drew up their principles to form the basis of an armistice with Germany and Austria,—almost certainly before any member of the Government at Washington could have broken the seal of the Swiss Legation on the first German note. On the morning of October 8th, the military and naval representatives of the three European Allies formulated the details of armistice terms on the basis laid down by their Prime Ministers. On October 23rd the American Government informed those three European Governments that it felt that it "could not decline to take up with the Governments with which the Government of the United States is associated the question of an armistice." The note added the "*suggestion* that, if those Governments are disposed to effect peace" then the proper advisers of all four governments prepare and submit the terms of an armistice for their consideration. If those governments were not disposed to effect peace, or to have an armistice as the first step thereto, it was in their power to say so. That they were so disposed, is evident from the immediate steps taken to formulate the armistice. Finally, in their official note of November 4th, the three Prime Ministers "declare their willingness to make peace."

M. Mermeix declares positively (p. 280) that "Wilson had nothing to do

with the determination of the terms of the armistice."⁴ He claims that the military terms were practically entirely French, and the comparison which he makes between the original French draft and the one finally accepted justifies his conclusion.

Now as to the operation of the armistice and its results. There are, apparently, a good many unthinking people abroad who are inclined to lay the blame for a large part of their troubles, during the last three years or more, upon the armistice. They seem to think that were it not for that and had the Allies marched to Berlin, the situation now would be better. It accounts for their perpetual hunting for a scape-goat upon which to throw the blame. They are right in blaming the armistice; but the trouble is not due to the fact that an armistice was made, but to the kind of armistice.

An armistice is, or should be, purely a military measure. It is a cessation of arms for the sole purpose of enabling warring nations to agree on terms of peace. Its sole conditions, therefore, should be such as will absolutely guarantee against the resumption of hostilities to interrupt the men who are determining the terms of peace. The military conditions imposed on either side are the more rigorous, to the possible limit of absolute surrender, according as the other side is the more powerful when the armistice is asked for by its enemy. The President of the United States clearly understood this when, in his note of October 14th, he informed the German Government that "it must be clearly understood that the process of evacuation and the conditions of an armistice are matters which must be left to the judgment and advice of the military advisers of the Government of the United States and the Allied Governments;" and when, in his note of October 23rd, he said that if the Allied Governments were willing to make peace, the military advisers should prepare the terms of an armistice for submission to those governments and that of the United States.

A military armistice contemplates that steps will very promptly follow for the establishment of peace. It is based on the assumption that peace is the only possible condition for prosperity and that delay in its resumption may be disastrous. But an armistice which is based upon the indefinite continuance of military control and which perhaps embodies terms of indefinite execution, only invites delay.

The one great error in the armistice, as now admitted by thinking men generally in Europe, was in the failure to demand complete surrender with resulting disarmament and demobilization. The situation would have compelled acceptance of this condition by the Germans. On the west they were confronted by a superior force of British, French and Americans, and on the south the map and the situation showed the impending attack from Italy and General Franchet d'Esperay's Army of the East.

Such an armistice could have been followed in a few days by the preliminary treaty of peace imposing the military, naval and air terms. Immediately the Allied commissions could have set to work dismantling fortifica-

⁴ *Wilson re fut pour rien dous la fixation des termes de l'Armistice.*

tions, abolishing the military system, closing arms factories and, in fact, doing all the things that more than a year later they had to do under circumstances of far greater difficulty. And above all, the remaining peace terms, relating largely to world-conditions for generations to come, could have been more calmly discussed without the fear of a suddenly revived military Germany which haunted the daily proceedings of the actual Peace Conference.

This defective armistice was signed on November 11th. The nations seemed indifferent about making peace, trusting to the huge Allied armies then in France to control Germany. But the great expense of their maintenance and the absence of millions of men from their homes, cheerfully borne in war, became very irksome to the peoples in peace, and these armies began rapidly to diminish. The 11th of December came, with no Peace Conference in sight, and the armistice had to be renewed. Allied military men began to feel grave apprehension when they thought of the millions of trained soldiers in Germany whom they themselves had left with an unknown but large equipment of arms, politically demoralized, to be sure, and for the time sick of war; yet there was always the possibility that the right leader might yet arise with the right war-cry to bring them to their feet again. So, further security was attempted by additional terms to the renewed armistice. The 11th of January, 1919, came with the Peace Conference just getting to work, and the same course was followed in the second renewal of the armistice.

When the time for the third renewal of the armistice—February 11th—approached, the situation had grown more serious. The Allied armies were greatly reduced and the process of reduction was rapidly continuing. Notwithstanding the fact that the arms called for by the terms of the armistice had been surrendered and that the Germans had abandoned on the field still more of many important articles of equipment than they had surrendered under the armistice, there was a growing fear in certain quarters that there was still a great accumulation of arms in Germany and that their manufacturing plants were still producing them in quantities. When we consider the total demoralization of Germany at that time, it is difficult to believe that there was much ground for this apprehension. Nevertheless, the fear existed. It made itself evident in the still more drastic terms that were proposed to be imposed in this renewal of the armistice. As there was considerable difference of opinion as to the wisdom of this course, an Allied committee of civil and military representatives was appointed to prepare a memorandum and recommendation on this subject for consideration by the heads of the four governments.

When this committee met and the course which it was inclined to take became evident, the American representative expressed the following opinion: that the Allies had every reason for supporting the then existing government in Germany; that this government was as nearly a democratic one as could be expected at that time and under the circumstances; that the continual pin-thrusts being made by the Allies were playing into the hands of

the opponents in Germany of this government; that, if another revolution came, this government would probably be succeeded either by an imperialistic military one, or by a bolshevist one; and that, finally, instead of these continual additions of new terms to the armistice, there should be drawn up at once the final military peace terms which, being imposed upon Germany without further delay, would relieve the Allies of all further apprehension. The committee, however, accepted the other proposed terms for the renewal of the armistice and made its report. The council of the heads of governments, however, decided upon the other course. It adopted a resolution to the effect that a renewal of the armistice would no longer be granted for a fixed time, but only for a short period during which the final military, naval and air terms of peace would be drafted and after approval would be at once submitted to the Germans for acceptance as a preliminary treaty,—and that the Germans should be at once so informed.

The Germans were at once so informed, and it is much to be regretted that the course that had been contemplated was not followed to a conclusion. A military and naval committee was at once appointed to prepare the draft of these final peace terms. In a few days it had completed its work and submitted its recommendations. In these recommendations there was only one point in regard to which there was any material difference of opinion among the heads of the governments. Had they desired, they could have settled this difference of opinion within twenty-four hours and these final military terms could have been, and undoubtedly would have been, immediately imposed upon Germany. Unfortunately, the President of the United States, who had supported this course, had been obliged to return to Washington. During his absence it was decided to revert to the former method of procedure and to combine all of the other terms of the treaty with the military terms. The result was that what would otherwise have been the real treaty of peace had to wait until the Powers had settled their differences of opinion about matters which were, largely, only incidental to a treaty of peace. And so, the preliminary treaty,—which involved the military, naval and air terms, and which was all that was necessary in order to bring a feeling of real security to Europe and to enormously reduce wasteful expenditures,—had to wait until the general treaty was signed on June 28, 1919. This treaty did not go into effect until the specified number of Allied Powers had ratified it. The result was that measures which could have been and should have been begun the better part of a year before were not undertaken until the beginning of the year 1920.

All of this was due, not to the fact of the armistice but to the form of it.

The armistice was made because all the Allied world wanted it, and for no other reason. But its defective form, for which America was in no way whatever responsible, invited and permitted in a considerable degree the delays which proved the bane of the Peace Conference and which prevented the more prompt reestablishment of the peace of the world.

THE NEGOTIATION OF EXTERNAL LOANS WITH FOREIGN GOVERNMENTS¹

BY CHARLES CHENEY HYDE
of the Board of Editors

PRELIMINARY

It is of advantage to every state in need of financial aid, as well as to the banks of every country having funds to invest abroad, that external governmental loans be generally regarded attractive. Attractiveness amounting to more than temporary and sentimental interest, depends upon the development of a conviction among the best buyers of every land that such loans constitute a safe investment in the face of every contingency reasonably to be anticipated, and that they are fairly immune from dangers which have heretofore proved to be inherent in or incidental to dealings with sovereign states of certain types—dangers of repudiation on colorable or solid grounds, dangers of invalidity, dangers arising from the operation of certain principles of international law concerning the effect of changes of sovereignty, dangers due to inadequate security or to pledges incapable of practical utilization for the benefit of the lender, dangers due to the freedom of the borrower to apply at will and without restraint the proceeds of a loan.

Experience has shown that the importance of any one of these dangers varies greatly according to the conditions of the particular case, and largely in proportion to the character and stability of the borrower. Thus in some instances the sole and reasonable concern of the lender pertains to the validity of the transaction; in others, the matter of validity affords but the first of a series of equally grave problems. The long record of losses sustained by holders of perfectly valid external bonds encourages belief that lenders have at times failed to appreciate the significance or reality of questions wholly unrelated to those of validity, and yet indissolubly connected with the matter of negotiation.

Despite the vast differences in the stability and character and credit and morale of the states comprising the international society, any one of them may seek and need foreign fiscal aid. When it does, its capacity to become a desirable borrower should be utilized. It is of highest importance that weak as well as strong states should be enabled to obtain funds for legitimate ends on just terms. If, therefore, by any process, an American bank may find itself in a position to lend with reasonable safety to a state of any

¹ A slight enlargement of a paper presented to the Buenos Aires Conference of the International Law Association, August, 1922.

continent and of any type or class, the means of attaining that position deserve consideration. It is not suggested that a loan to a state habitually in default and of unsavory record is to be regarded as desirable, or that the moral risk is ever to be disregarded in any transaction. It is believed, however, that as the financial history of every prospective public borrower is an open book, its idiosyncracies and propensities known, its fundamental laws within the reach of all, and the availability of its assets for hypothecation and use for the benefit of the lender under most unfavorable circumstances a matter of reasonable calculation, it lies within the power of American banks to estimate intelligently and closely the degree and kind of protection to be demanded of each particular applicant, and also to fix the terms on which it may, under most conditions, be fairly accepted as a borrower.

Another and perhaps a broader aspect of the general problem must engage attention. Arrangements acknowledged to be essential for the protection of lenders to states whose finances, through conditions of chronic disorder, have required complete rehabilitation and even political oversight, or which have not been accepted for all purposes as full-fledged members of the society of nations, should not be taken as standards of general applicability in dealings with states which have reached a higher and different plane. Certain terms imposed upon countries under the wardship of the United States, or upon others still subjected to a régime of extraterritorial jurisdiction, offer precedents of doubtful expediency in transactions with borrowers of a wholly different type. It is not suggested that necessary safeguards should ever be omitted. It is one of the chief purposes of this memorandum to emphasize the importance of safeguards which have been too often overlooked or ignored. It is merely submitted that some terms exacted of, and unwillingly yet validly accepted by, certain foreign borrowers, might prove to be the sowing of dragons' teeth and beget a popular opposition sufficing in time to jeopardize service and produce default. Involved, therefore, in every external bond transaction is the matter of fiscal statesmanship which is likely to play an increasingly important part in the largest success of foreign loans hereafter to be underwritten in the United States; for the question confronting the American lender is not entirely how rigorously or completely can the borrower be kept under the domination of the lender, but also how can the debtor be made the lasting friend of the American creditor, and inculcated with the desire both to repay obligations as they accrue, and also to seek in the United States rather than elsewhere financial aid whenever needed. It is the effect of such an idea upon the success of American diplomacy in the best sense that gives to every external loan floated in the United States a significance far beyond the horizon of the individual purchaser of a bond. Happily American bankers are not without the larger vision.

VALIDITY

An external bond issue must be valid as a primary condition of acceptability. Validity, so far as it concerns the conduct of the borrower, is governed by the laws and constitution (if any) of the issuing state.³ Their requirements must be fully met. The lender must, therefore, satisfy itself as to compliance.³ In the course of so doing it may, in common prudence, invoke the aid of local counsel within the territory of the borrower, and deemed competent to pass judgment on the question whether every local condition essential to validity has been satisfied. Such action does not, however, remove from the lender the burden of taking cognizance of every obstacle which it has reason to believe or suspect the institutions of the borrower may oppose, and of seeking advice thereon. The lender necessarily assumes grave responsibility in accepting the assurances of foreign local advisors as to whether contemplated dangers are fanciful, or have been removed, or are non-existent. What constitutes requisite assurance and what is to be regarded as trustworthy evidence of the requirements of the local law depend largely upon the personality of the borrower and the character of its highest officials. These vary greatly. In a recent bond agreement it was announced that

The Republic hereby represents and declares that all acts, conditions and legal formalities which should have been done or which should have happened or existed prior to the issuance of the Bonds, have existed, happened or been done as required by the constitution and laws of the Republic and in strict conformity therewith.⁴

It may be observed, however, that no official representation, however entitled to credibility, is necessarily decisive of the fact involved; and it may be doubted whether it precludes denial of an allegation of fact by the successor to the borrower in case the officials of the borrower have for any

³ Although this condition and a variety of applications of it are familiar to American bankers and their counsel, it seems necessary, for sake of clearness, to advert to the general principle and to modes of assuring respect for it.

³ In this connection, however, another consideration should be heeded. Oftentimes agreements for external bond issues are in fact concluded and perfected in the territory of the state where the lender is located—a circumstance which serves as a warning that no provision of the contract should set at nought any prohibition of the laws of that state denouncing as invalid contracts or provisions of a particular character. It is not suggested that the validity of mortgages or encumbrances of any kind upon immovable property within the state of the borrower is likely to be affected by the statutes of a foreign sovereignty. It is merely sought to be pointed out that in other matters, the state where the agreement is made may, for reasons of public policy, impose restrictions which if disregarded might prove embarrassing to the lender should the borrower subsequently invoke them as a ground for repudiation or rescission.

⁴ Such is the language of a Bond Trust and Fiscal Agency Agreement between a certain Central American State and bankers of the United States, concluded in 1920.

See also Articles VI and X of Chinese Hankow Improvement Loan of September 17,

reason been led to make false assertions. Oftentimes, therefore, governmental representations need to be checked up by every available means. There is never removed from the lender the serious responsibility of assuring itself beyond possibility of reasonable doubt that no undertaking on the part of the borrower is void or even voidable, constituting an abuse of power through excessive yieldings of rights or prerogatives not to be relinquished under the local law.

The question of validity concerns both the form and substance of the borrower's undertaking. Technically, it embraces generally the two-fold inquiry: first, whether the borrower has the right under its own laws to undertake to do what is sought to be done; and secondly, whether in its undertakings it has pursued the course prescribed by those laws. Practically there is another and perhaps a larger question involved in the first inquiry, and which is never to be overlooked: whether for any reason and regardless of the approval of the local law, intelligent or unintelligent opinion within the territory controlled by the borrower and affected by the loan, challenges the obligations assumed, or protests against powers conferred on the lender as subversive of rights of sovereignty and as manifesting an abuse of governmental functions by the borrower.

A few of the matters which pertain to validity may be noted and regardless of the order in which they may be expected actually to arise.

With respect to the matter of security, there is involved an inquiry touching the kind or nature of the asset sought to be pledged. Does, for example, the local law permit the mortgaging or hypothecation of the public domain or its appurtenances such as a harbor or a court house or any other thing fulfilling an essentially public function and necessarily incidental to the administration of government or the exercise of political independence? ⁵ Again, does the local law permit the use and control of the particular kind of pledged public property by or for the benefit of a foreign lender, as by a trustee in its behalf, so as to enable it directly upon default, to utilize freely the security for the loan? More broadly, does the local law permit the borrower to divest itself of possession and control of the particular thing sought to be utilized as security? Does the local law forbid mortgage agreements serving to vest title to public property in a mortgagee or trustee? Do any general prohibitions of the alienation of state property render illegal attempts to utilize it freely as security for public loans? Are pledges of public revenues to be derived from any particular sources locally deemed better or worse in point of legality than the hypothecation of existing tangible property, whether movable or immovable?

1914, MacMurray, *Treaties and Agreements with and concerning China*, Vol. II, p. 1172; also Article II of Chinese agreement with Lee, Higginson and Co., of April 7, 1916, *ibid.*, p. 1279.

⁵ A Chinese loan agreement with French bankers, January 21, 1914, for the construction of a railway, purported to pledge by way of guaranty, the Port of Yamchow, its materials and appurtenances.

Such inquiries suggest the question which may recur when pledges of public property are utilized as security, whether the lender may not in a particular case go too far, and jeopardize the safety of a loan by exacting and obtaining the control and use of something by way of security which the laws of the borrower forbid it to alienate or pledge, or which, regardless of the law, popular opinion within the territory of the borrower deems to be inalienable.

Whether general or special legislation, or executive decrees purporting to authorize the provisions of a loan agreement accord with the fundamental law or constitution of the borrower must always demand, as has been observed, rigid examination. In the course of it the lender must take heed of the known reluctance of local advisers of high repute to denounce as illegal or unconstitutional steps taken by the governmental borrower, within whose domain they reside, to procure desired credit. The lender must ever be on its guard to ascertain by some process whether executive or legislative approval, however freely given, is such as not to encourage attempts to repudiate what the borrower has undertaken to do or permit, the moment a new administration takes the reins of government and essays to frustrate the work of its predecessor.

Again, the ostensible purposes of an agreement may run counter to what the law of the borrower permits; or the validity of pledges of particular assets may impose as a condition subsequent the expenditure of the proceeds of the borrowed funds for an essentially public end local to or peculiarly connected with the community or district within which the security is found. Such requirements demand rigid scrutiny and full respect.

The foregoing inquiries indicate roughly the scope of the task confronting the lender, and to be accomplished by it before it can announce with assurance the conclusion of a valid agreement, and one which later administrations conducting the affairs of the borrower will have little or no reason to oppose as invalid. With that initial problem out of the way, others equally complex arise for solution.

EFFECTS OF CHANGE OF SOVEREIGNTY

In external bond issues the question must frequently arise, according to the nature of the borrower: What state or government, if any, will be responsible for service, in case the territory to which the loan directly pertains undergoes a change of sovereignty? Suppose, for example, the Government of the Republic of Mexico issues external bonds, related through the nature of the security or otherwise, to the State of Sonora. Suppose Sonora revolts and attains its independence, uniting possibly with a successful confederacy in the neighboring State of Chihuahua. What entity is in such event to be regarded as responsible to the lender? Does the Republic of Mexico retain the burden; or does the new confederacy assume it; or is there apportionment? Again, is the correct result dependent upon

the purpose of the loan, or upon the place where the proceeds have been expended, or upon the nature of the security, or upon the mode by which sovereignty was shifted? While the true solution is doubtless to be found in the principles of international law, there has been some diversity of opinion as to what they ordain. Nevertheless, American diplomatic discussions and other official documents shed much light and offer useful guidance. They indicate, for example, purposes to be avoided, types of securities likely to prove unstable, and the possible value of definite contractual provisions by way of safeguard. Without entering upon a full discussion of the legal principles involved or of American interpretations thereof, attention is called to a few pertinent considerations which both appear to fortify.

The true theory justifying the burdening of particular territory with any part of a debt, in case of a change of sovereignty, is believed to depend upon whether that debt is to be deemed advantageous rather than detrimental to that territory. This principle is fairly applicable to the general as well as the so-called local debts of the original borrower. Where a debt is shown to have been incurred for purposes to be fairly deemed hostile to the purposes of a particular district or territory, that territory, in case of a change of sovereignty wrought, for example, by revolution, is not likely to be regarded as burdened with the fiscal obligation, irrespective of the design of the original debtor. Such is the case where, for example, a debt is sought to be charged against a particular area or district of the borrower of which the sovereignty is subsequently lost, as a means of obtaining funds in order to retain control by force over such district, and the revenues thereof are pledged as security for the loan.⁶ A like result might under certain conditions be anticipated, even where a mortgage had been duly impressed upon a particular area, if it could be shown that the purpose of the obligation was essentially hostile to the welfare of the inhabitants thereof. It should be observed in this connection that the Department of State has at least on one occasion—in discussions of the Cuban debt following the Spanish-American War—not been disposed to regard a pledge of future revenues controlled by the debtor, as the equivalent of a mortgage, or as constituting a like encumbrance upon the territory from which such revenues were to be derived after it had undergone a change of sovereignty.⁷

⁶ The American Commissioners (to whom Prof. John Bassett Moore was Secretary and Counsel) negotiating a treaty of peace with Spain in Paris in 1898, in denying that the so-called Cuban debt previously incurred by the Spanish Government constituted a burden which passed to the successor to the sovereignty of Cuba or to the United States declared: "The debt was contracted by Spain for national purposes, which in some cases were alien and in others actually adverse to the interests of Cuba; that in reality the greater part of it was contracted for the purpose of supporting a Spanish army in Cuba; and that, while the interest on it has been collected by a Spanish bank from the revenues of Cuba, the bonds bear upon their face, even where those revenues are pledged for their payment, the guarantee of the Spanish nation." (Moore, *International Law Digest*, I, 367.)

⁷ "No more in the opinion of the Spanish Government, therefore, than in point of law,

In view of the foregoing considerations, a bank lending funds to a foreign government should anticipate the possibility or likelihood that the sovereignty over territory of which the revenues or other assets are utilized as security may be transferred to another or a new state, and endeavor to safeguard itself accordingly.⁸ Certain modes of so doing suggest themselves.

The purpose of a loan should be so definitely and accurately described in the agreement as to discourage if not preclude contention by a succeeding sovereign (or by a subsequent government of the same state) that the design of the borrower was hostile to the interests of its territory or to any part thereof peculiarly connected with the debt, either as the place of expenditure of the proceeds, or as the locus of an asset pledged by way of security.⁹ Again, if a particular asset in one section is utilized as security for a general rather than a local debt of the borrower, the benefit of the section or district furnishing the security should be set forth in the agreement, and local approval made mention of, and if possible secured, as a means of fortifying a subsequent claim to apportionment, in case of the transfer of the district from the control of the borrowing state. The state which today secures a foreign loan for a military purpose, with the special design of holding in subjection and strengthening its grip upon a valuable and substantial section of its territory which furnishes through its material resources the sinews of credit, is incapable of assuring the lender that that section will, in case it revolts successfully and constitutes a new state, feel itself bound,

can it be maintained that that Government's promise to devote to the payment of a certain part of the national debt revenues yet to be raised by taxation in Cuba, constituted in any legal sense a mortgage. The so-called pledge of those revenues constituted, in fact and in law, a pledge of the good faith and ability of Spain to pay to a certain class of her creditors a certain part of her future revenues. They obtained no other security, beyond the guaranty of the 'Spanish Nation,' which was in reality the only thing that gave substance of value to the pledge, or to which they could resort for its performance." (Memorandum of American Peace Commission, Paris, 1898, Senate Document No. 62, 55 Cong., 3 Sess., Part II, 201, Moore, *International Law Digest*, I, 384).

⁸ In numerous cases the possibility of such a change of sovereignty is so remote as to be purely fanciful. In such instances the lender may obviously dismiss from consideration some of the problems above noted.

⁹ For a singular instance where a railway concession granted by the Spanish Government for a line in the island of Luzon, was regarded by the Attorney General of the United States as not wholly beneficial to the territory traversed, see opinion of Mr. Griggs, July 26, 1900, 23 *Op. Attys. Gen.* 181.

Chinese loans of the past decade have commonly adverted to the purposes thereof in the original agreements. Possibly at times the professed designs have disguised the actual aim of the borrower. See W. W. Willoughby, *Foreign Rights and Interests in China*, Baltimore, 1920, 509-510.

A Chinese loan agreement of May 13, 1916, with the American International Corporation, adverted in the preamble to the works of great humanitarian benefit to be undertaken by the borrower, which in this case embraced a canal improvement. See MacMurray, *Treaties and Agreements with and concerning China*, II, 1304.

or become legally bound, to bear the burden sought by the lender to be impressed upon it.¹⁰

If there be any reason to anticipate during the life of a loan such a change of sovereignty as may affect the interests of the lender, the original agreement should make provision therefor, setting forth definitely the understanding of the contracting parties as to the effect of such an event. No instance is recalled where this precaution has been taken by a lending bank. The principle appears, however, to have been utilized in public agreements or treaties between states.¹¹ Thus if it is designed to hold the original borrower, even in case a substantial part of its territory embracing assets pledged as security be transferred from its sovereignty, the fact should be stated in terms.¹² Again, if it is designed to impress irrevocably on that part of the territory of the borrower affording security for the debt the full burden of payment of interest and principal, and irrespective of the nature or place of expenditures of the proceeds of the loan, the contract should announce the fact. In this connection, however, a preliminary question akin to one of validity might in the particular case supervene and demand consideration: as to the extent of the power of the borrower to burden territory with a debt by any process, beyond the time when the borrower retains its control thereof, unless that territory may be fairly deemed to gain from the loan a benefit proportional to the load placed upon its resources.

Still again, it may be the actual design of the contracting parties, in event of a change of sovereignty, and perhaps regardless of the location of the particular security, to apportion the burden of service. Such an understanding should find clear expression in the agreement.

It is believed that, in case a loan is concluded by or for the benefit of a colonial possession rather than for that of the parent state, contemplating the exclusive use of the proceeds within the colony, and possibly secured by the pledge of assets therein, the colonial government should be made the direct obligor and with the approval and perhaps through the instrumentality of the parent state. In such case, that approval, while possibly

¹⁰ The contentions of the United States in the negotiation of a treaty of peace with Spain in 1898 would hardly encourage a different view.

¹¹ Thus Article XXIV of the treaty between the United States and Panama of November 18, 1903, declares: "No change either in the Government or in the laws and treaties of the Republic of Panama shall, without the consent of the United States, affect any right of the United States under the present convention, or under any treaty stipulation between the two countries that now exist or may hereafter exist touching the subject matter of this convention.

"If the Republic of Panama shall hereafter enter as a constituent into any other Government or into any union or confederation of states, so as to merge her sovereignty or independence in such Government, union or confederation, the rights of the United States under this convention shall not be in any respect lessened or impaired." (Malloy's *Treaties*, II, 1356.)

¹² Whether such an undertaking would be valid, should engage the attention of counsel as a problem incidental to that of ascertaining the scope of the powers of the borrower.

necessary to assure validity, would not necessarily cause that state to be a party to the transaction or to assume any burdens of the debt. At the present day, lending banks may fairly demand that external colonial loans be irrevocably and permanently impressed upon the particular colony concerned, regardless of future changes of sovereignty. This can best (and doubtless in some instances only) be accomplished by making the colonial government the obligor, by confining expenditure of the proceeds to the territory of the colony, and by imposing no burden of service under any contingency upon any political entity outside of it.¹³

It is not suggested that the lender can always fully protect itself. Its very demands for safeguards may encourage or involve abuses of power on the part of the borrower and jeopardize the validity or success of the transaction. On the other hand, it ought to be clear that, if a change of sovereignty of territory of the borrower, and especially of parts thereof furnishing assets relied upon as security, is fairly to be anticipated, the lender is put on its guard. It must, at the present day, anticipate dangers in imposing upon communities having no voice in negotiation fiscal burdens lacking local approval, unless the benefits of the loan through the expenditure of the proceeds are confined to the territory burdened with service. The lender must take note also of the relative instability, in case of a change of sovereignty, of bare pledges of uncollected revenues, as compared with mortgages placing beyond the control of the borrower and within that of the lender or of an agency acting for it tangible assets of value. It must perceive the inherent danger of transactions subversive of the principles of international law as they are interpreted and applied by the United States. Conversely, there is distinct advantage for lender and borrower alike in arrangements which while respecting those principles, at the same time safeguard the equities of both parties as against contingencies which may otherwise work injury to each.

SECURITY

Oftentimes distinct from the problem of validity is that which concerns security. The importance of the matter in a particular case varies with the character and vigor of the borrower. The known strength and scrupulousness of some borrowers render negligible any question of security. This circumstance offers no criterion, however, of the importance of that question when numerous other states become applicants for loans abroad.

Whenever the matter of security is vital, one general and underlying consideration demands attention: the normal impotence of the lender to control the conduct of the borrower, if a sovereign state, when it commits any act jeopardizing the payment of principal or interest. Not only is the borrower immune, as is well known from suit by the lender (unless the

¹³ An interesting instance of an arrangement substantially on such lines is seen in a certain colonial bond agreement of January, 1922.

borrower consents to subject itself to jurisdiction), but it is also free in fact to act at will with respect to any asset remaining within its control, howsoever designed to assure service. The legal restraint imposed by the contract upon the borrower is not to be underestimated; but the contractual restraint, except in so far as disrespect for it may be productive of diplomatic interposition, does not serve to remove from the borrower the possession and control of what may be used to induce credit. It is the actual condition confronting the lender to a foreign state, rather than the extent of its theoretical rights derived from the contract, which needs frankest recognition during the period of negotiation. Failure to perceive that condition or to deal with it on its merits, has even within the past decade resulted in substantial losses to lenders. It is believed, therefore, to be of first importance in the negotiation of any loan where the matter of security is deemed essential, to endeavor to save the lender from dangers peculiar to the nature of the borrower, and to safeguard it from the operation of the principle above noted. In such an endeavor the terms of some agreements of the past ten years offer guidance. In examining any proposal for application in a given case, the inquiry must be unceasingly pressed: Does the operation of the contract serve to remove from the borrower the power as well as right to control adversely the thing pledged? And again: Does the contract place within the reach of the lender or of any agency in its behalf an asset the retention of which will deter the borrower from conduct injurious to the security or jeopardizing service?

In every loan requiring and providing for security, a preliminary question confronts the lender, concerning the effect of the security upon the obligation of the borrower to pay principal and interest. To be specific, is that obligation a primary one, or is it one contingent upon the failure of income derivable from the thing pledged to maintain service? The design of the parties should be set forth in the agreement. At times this has been done, and in such a way as to manifest a direct liability of the obligor irrespective of any security pledged under the agreement.¹⁴

It may be doubted whether the borrower should be permitted to assume merely the responsibility of a guarantor, to be subjected to the burden of payment of interest or principal solely upon the insufficiency of income from pledged revenues or mortgaged assets. Although the borrower may contemplate the satisfaction of service from such sources, anticipating no fiscal obligation of its own until they become inadequate, the lender should, whenever possible, secure the right to rely upon the direct obligation of the

¹⁴ "The loan represented by the proposed bonds shall constitute and is hereby declared to be a direct liability and obligation of the Republic irrespective of any security provided hereunder." (Section I (12) of a certain Bond Trust and Fiscal Agency Agreement of 1920.)

See also Article II of proposed loan agreement of 1911, between the Republic of Honduras and Guaranty Trust Company of New York as fiscal agent.

borrower throughout the life of the loan.¹⁵ The external bond agreements of China during the past decade have lacked uniformity in this regard. In some instances the borrower appears to have assumed a direct obligation irrespective of the security; in others, there is less assurance of such a design. In numerous Chinese agreements the borrower has undertaken to procure requisite funds from other sources should the revenues from pledged assets prove insufficient as security. The wisdom of such provisions may be doubted. Service is better assured where, through the terms of the agreement, definite and ample security is obtained, and arrangement made for its complete protection and control by or in behalf of the lender throughout the life of the loan. Recourse to a procedure contemplating possible insufficiency in the security (possibly not taken wholly from the control of the borrower), and to be followed in such event by pledges of other property, is unfortunate in its effect upon the mind of the obligor. It is not conducive to precision or certainty or to the protection of the lender. It is believed to be a loose mode of propping up an asset of the insufficiency of which both parties to the arrangement confess doubt.

It must be obvious that the value of any security depends upon its freedom from prior encumbrance. A loan agreement may advert to the fact. It has happened, however, that even where the borrower has declared the security to be free, other foreign lenders have denied the fact and so impaired the value of the property pledged as a safeguard for the lender. Such an occurrence may be due to a variety of causes, and among them, in particular, to the failure of the borrower to adhere to a system insuring formality and notoriety in the negotiation of every external loan. Regardless of the difficulty involved, the lender must always be on its guard to ascertain whether in fact the security utilized to induce credit is subject to a prior lien.

Whenever a valid lien is sought to be impressed upon any asset of the borrower for the protection of the lender, the main question confronting the latter is two-fold: first, whether the valuable thing to be pledged will suffice to secure and maintain service; and secondly, whether, in case of default, it will enable the lender to protect itself from all loss. The solution of both questions really depends, in most cases, upon one condition—the extent to which the borrower puts beyond its own possession and control the asset pledged as security, and so protects the lender against acts which the borrower as a sovereign state might commit, either in good or bad faith, adverse to the interests of the lender. The action to be demanded of the borrower, through the terms of the agreement, may depend in part upon the nature of the security. For that reason differences between the forms of assets oftentimes utilized therefor warrant scrutiny.

¹⁵ It may be, however, that the lender is willing to proceed on a different theory and content that service should be effected primarily out of income derivable from the security, and secondarily from the general revenues of the borrower.

An asset frequently utilized by way of security is the future revenue from resources under the public control of the borrower. These vary greatly in kind. They may be those derivable from governmental monopolies in certain activities such as the production of tobacco, or wines or salt.¹⁶ The pledged revenues may, on the other hand, be prospective customs from specified ports or from all ports of the borrower, or on particular articles to be imported or exported. In either case they represent at best, a pledge of future revenues which, however valuable, normally require executory action on the part of the borrower as a means of rendering them beneficial to the lender.¹⁷ When the agreement merely adverts to the pledge of the obligor without more ado, the lender merely accepts or obtains the undertaking of the borrower to regard as hypothecated for the benefit of the former the particular asset involved. Such an arrangement is generally open to two objections: first, it leaves within the actual control of the borrower an asset which should be placed beyond its reach; and secondly, in case of default, it requires further action on the part of the borrower to utilize or render beneficial for the lender what was pledged for its benefit. Obviously these objections are applicable in any case where, regardless of the nature of the thing pledged, the borrower retains control of the security and must take some affirmative action upon default.

Some agreements have purported to place checks upon the freedom of the borrower, and others have provided that in case of default, the lender may exercise certain privileges resulting from the pledge. The various arrangements of this character are believed to be insufficient because while, on the one hand, they purport to exact a security, they commonly fail to safeguard the lender during the life of the loan, and especially when default occurs. The borrower remains free, except for its contractual undertaking, to control as a sovereign what should be removed as far as possible from its grasp. Upon default, there is no means whereby the lender or any agency in its behalf can acquire control of what has been pledged and of which the obligor may even then decline to relinquish possession. It thus becomes impossible for such an agency to possess itself in that event automatically of the asset needed to maintain service and protect the lender. Whenever security is needed as against the default of the borrower, the asset pledged should, by the terms of the agreement, be safeguarded and rendered capable of appropriate utilization. Arrangements which are lacking in this regard may prove dangerous for the lender. It should be observed, however, that the danger is likely to be due to the difficulty in making appropriate and necessary provision for the treatment of the particular type of asset pledged as security.

It is not to be implied that pledges of future revenues may not be rendered a practical means of safeguarding the lender. In several instances they

¹⁶ Such monopolies have been so utilized by both Japan and China.

¹⁷ See Memorandum of American Peace Commission, at Paris, November 21, 1898, Moore, *International Law Digest*, I, 381, 384.

have been so utilized to its advantage. This has been due to the care taken to remove from the borrower during the life of the loan the control of the collection and expenditure of such revenues. Arrangements with the Dominican Republic, with Nicaragua and Liberia, and under the governmental approval of the United States, are typical. Removal from the control of the borrower of the revenues pledged has been effected through the medium of a receiver or trustee authorized to fulfill the function of collecting and distributing for the service of the loan the funds designed to serve that purpose, and thus enabled to act without the special authorization of the borrower under various contingencies throughout the life of the loan. Such arrangements, it should be noted, have proved efficacious because the arrangements with the lenders have been conditioned upon or in pursuance of public conventions of the United States with the borrowers which, in consequence thereof, have accepted the protecting arm of the United States partly as a means of financial rehabilitation.

In certain countries of other continents such as Serbia, there is seen an instance of the revenue-collecting function in the possession and control of the so-called Autonomous Administration of Monopolies at Belgrade, which is independent of the government, and maintains service on the external loans. Again, in Greece, the so-called International Financial Commission exercises a control over certain revenues assigned for the service of the external debt. In Egypt the so-called Commission and *Caisse de la Dette* have served a like purpose. Each of these entities or agencies has been brought into being, or established or upheld through the unified action of the countries whose nationals were interested in external loans. It may be doubted, however, whether they suggest modes of procedure likely to appeal to American lenders contemplating loans to prospective borrowers on the American continents. It will be recalled that, in 1911, both President Taft and Secretary Knox intimated that the activities and methods of European creditors to protect themselves as against Honduras were considerations enhancing the desirability of the United States-Honduran proposed loan convention of that year, and which contemplated a collector general of customs nominated by an American fiscal agent and approved by the President of the United States.¹⁸

Another aspect of the use of public revenues by way of security deserves attention. As has been observed, pledges thereof, and especially the transfer of the collecting function to foreign agencies, however valid, may give rise to practical difficulties in case the territory from which such revenues are specially derived undergoes a change of sovereignty. Even though sovereignty be retained by the borrower, local popular opinion may vigorously denounce the exercise of the revenue collecting function by a foreign fiscal agency, and that regardless of its efficacy in serving both borrower and lender. That opinion may challenge as an unlawful or unreasonable

¹⁸ See *United States Foreign Relations*, 1912, pp. 555, 556, 559, 591.

infringement of the sovereignty of the borrower the method employed to safeguard the national revenues, or to maintain service on the debt.¹⁹ It is perhaps unimportant whether such contentions are sound or false. It is significant, however, that at times they have found sympathy in high official quarters in the United States. This circumstance raises the question whether increasing popular opposition to the lender and to acts designed for its protection is not to be anticipated as a normal consequence of the transfer of the control of public revenues when those acts manifest a relinquishment of functions of government commonly retained by independent states; and whether also such opposition may not serve to impair service or weaken the security. If such a possibility is reasonable and not remote, the prospective lender ought to anticipate it. As a result, it may conclude that the very provisions which serve to render pledges of revenue really advantageous as security are inherently dangerous, save under exceptional circumstances when the status of the borrower as a ward of the United States and the sanction of the government of the latter unite in producing special safeguards. The pledging of public revenues as security presents, therefore, a dilemma. If those revenues remain under the control of the borrower there is insufficient assurance that they will be applied for the service of the debt and the full benefit of the lender; if, on the other hand, they are surrendered either to the lender or to a trustee in its behalf, popular opposition may suffice to jeopardize the safety and success of the transaction however valid.

The alternative is a mortgage the essential nature of which is familiar in America and England, *and of assets which fairly lend themselves to hypothecation*, without inspiring the contention that the transfer of control thereof betokens an improper delegation of power. In utilizing, however, the mortgage idea of theory, care must be taken, as in any case of hypothecation, to protect duly the lender by processes clearly understood by the parties to the agreement. Some Chinese agreements have disclosed attempts of the parties thereto to express with exactness their understanding. Thus in one case a "specific and first mortgage" of a railway and equipment thereof was to be construed and treated as equivalent in purport and effect "to a mortgage customarily executed in England." In another, a "first trust mortgage" upon certain railroads was to be executed "in accordance with the forms of the American law which are customary and usual in such cases to secure payment, etc." Prior to the execution of the mortgage, the provisions of the agreement in respect thereto were to be "construed and treated as of the same purport and effect as a mortgage customarily executed and delivered in the United States to a trustee, for the purpose of securing loans to and bonds issued upon railway properties." In still an-

¹⁹ See, for example, the *Manifesto of the National Congress to the Honduran People*, signed by most of the deputies February 14, 1911, giving reasons for the action of the Congress of Honduras in disapproving the convention with the United States, signed January 10 of that year. *United States Foreign Relations*, 1912, p. 577.

other a "special guaranty" of the Chinese Government was to constitute a first mortgage on a railway. The lender, in case of default, was to have full power "to exercise all the rights accruing from this special guaranty according to the laws in force on this subject in the countries of Europe, such as Russia, France or England." While these are steps in the right direction, they seem to fall short of the end desired. Whenever a mortgage is utilized as security, it is believed important that the agreement specify whether the title to property so encumbered is to be transferred to the mortgagee or to a trustee in its behalf, or is to remain in the mortgagor. In an external bond agreement the understanding of the parties should be made clear. When title and control remain in the governmental mortgagor, difficulty may confront the lender in case of default, in causing the former to place within its reach the asset or the fruits thereof designed to safeguard it in such a contingency. It may be doubted whether the lender can be fully protected upon default, unless arrangement is made whereby at once upon that occurrence the lender or some agency in its behalf not only acquires the right, but also is enabled thereupon automatically, by virtue of what it already possesses, and without the further aid of the borrower, to utilize fully the benefits of the mortgage.²⁰ Such freedom of action by the lender or an agency in its behalf is practically and usually incompatible with the retention of title and control by the borrower. In some instances, however, elaborate provision has been made to protect the lender (even where title remained in the borrower) by devices placing within its reach valuable assets connected with the property encumbered, such as title deeds, embracing a right of disposition in case of default. While the surrender of such documents to the lender or its agent may, according to the law of the particular borrower, serve to perfect the encumbrance or enhance the formality of the transaction, or restrain default by inducing fidelity to the undertaking, it hardly affords an equivalent to that kind of protection which, under the law prevailing in America, the lender habitually obtains as against a private borrower. Such protection is oftentimes the peculiar need of the lender to a foreign government from which security is demanded.

The safety of the lender is better assured through the transfer of title and control over the mortgaged property to the lender as mortgagee, or to a trustee.²¹ As between these alternatives, the latter may at times appear advantageous. It is equitable to both parties; it enables an entity with representatives in the territory where the encumbered property is located

²⁰ Much less difficulty presents itself where the property pledged and relinquished to the possession of the lender or a trustee assumes the form of bonds or of shares of stock duly transferred to it, with a full power of disposition in case of default, and without necessitating further action by the borrower in that event. When the asset sought to be hypothecated consists of immovable property it is highly desirable and may, in the particular case, prove of utmost importance to place the pledgee in no less favorable a position.

²¹ This was effectively accomplished by the terms of a certain agreement negotiated in 1920, between an American state and the lending banks.

to function and operate directly upon the occurrence of an event when its services are properly requisitioned; it tends to remove dangers of interruption of service. If it is reasonable and lawful to encumber through a mortgage the particular property pledged as security, it is equally reasonable to utilize the services of a trustee for the success of the transaction. If the local laws present a definite obstacle, dangers of invalidity may compel abandonment of such an agency. If they do not, it is obviously desirable to place the trustee in a position where it may fully and freely conserve every asset constituting security, and thereby assist the borrower in the performance of its duties as such. To that end the question may present itself in a particular case as to the desirability of utilizing as trustee an entity strongly represented if not resident within the place where the security is located, especially if the latter be immovable property.

Irrespective of the nature of the security given, it may be of concern to the lender that the proceeds of a loan be so conserved and so expended as either to increase generally the power of the borrower to repay interest and principal, or to enhance definitely by some specific means assurance of faithful service. Opportunity for so doing may not be apparent when funds are wanted for the general purposes of the borrower. Again, the known character and stability of the borrower may be such as to demand no external watchfulness over its expenditures. On the other hand, where the purpose of a loan is for a particular outlay in a specified place, as, for example, an industrial development, the lender may be enabled, and may deem it necessary to provide through the terms of its agreement, that dangers of wastefulness or extravagance or cupidity be minimized or eliminated; and in some cases that the funds loaned be rendered productive of an income adequate for service. Devices appropriate to such an end are not open to practical objections oftentimes raised against certain forms of security. It is in no sense in derogation of the rights of the public borrower that the lender should exercise a degree of oversight or control over the expenditure of funds furnished by itself. Methods of so safeguarding the lender are various and familiar. A few may be noted. Where, for example, a loan is negotiated for the construction of a railway in the territory of the borrower, it may be of highest importance that the proceeds be deposited in a bank designated by the lender and subject to withdrawal solely under warrants issued under the approval or inspection or oversight of the lender or its agent. In certain cases it may become important to have methods of accounting fixed according to an accepted standard and in a particular language, and perhaps under the management of an accountant of the nationality of the lender and to be appointed with its approval. Again, it may be highly desirable to provide for an audit by an auditing officer appointed with the approval of the lender. Finally, the entire matter of expenditure may need to be subjected not merely to the oversight of the lender, but to the actual control of some agency in its behalf, such as a trustee; or ar-

rangement may be required for service (at least contingently) out of the very proceeds of the loan. In a word, whenever unfamiliarity on the part of the borrower with European or Western civilization and the business methods thereof, or insufficient experience with large industrial developments, or other kindred considerations so dictate, the conservation of the proceeds of the loan, in furtherance of the design of the parties, by the lender or a trustee must be regarded as beneficial to the interests of both parties to the transaction. The appropriateness of the method of conservation to be utilized in the particular case will depend largely upon the nature and record of the borrower. That requiring adoption may serve to harmonize conflicting equities, by establishing safeguards for the benefit of the lender, and by avoiding dangers of resentfulness to be anticipated from injury to the pride of the borrower.²²

By way of summary, the following points in relation to security deserve emphasis:

First, if security is needed, it should, regardless of its form or nature, be placed, whenever possible, wholly beyond the reach of the borrower and within the control of the lender or a trustee.

Secondly, except under special conditions rarely if ever present when the borrower is an independent state recognized for all purposes as a full-fledged member of the society of nations, the security should not assume a form such that utilization of it by the lender or a trustee involves the exercise of public functions locally deemed subversive of the sovereignty of the borrower and offensive to its national pride.

Thirdly, some degree of control or oversight by the lender or a trustee of the expenditure of proceeds of a loan must operate, whenever agreed upon, to conserve the strength of the borrower and proportionately safeguard the interests of the lender.

CERTAIN MISCELLANEOUS MATTERS

A few miscellaneous matters merit attention. In order to eliminate dangers of conflicting interpretations, it is obviously wise to make provision that one version of the agreement in a specified language be controlling.²³ To the same end it may be deemed wise to announce that the contract is to be construed as one concluded in pursuance of, and with a view to the operation of the laws of, a particular state. Controversy between the parties during the life of the loan should be anticipated; and especially issues concerning which agreement between them proves to be incapable of attain-

²² It may be observed that while no consideration can ever outweigh the value of a safeguard essential to the protection of the lender at all times during the life of the loan, an unnecessary precaution which roughly ignores the feelings of the borrower and is contemptuous of its pride is not likely to prove beneficial to the transaction or really advantageous to the lender.

²³ Instances are numerous.

ment. To meet that contingency there should be arrangement for some mode of adjustment outside of the exclusive control of the borrower. The right of the lender to invoke and utilize in case of need the diplomatic interposition of its own government should be appropriately acknowledged in case the borrower is known to be disposed to object to such procedure. The lender and its government should not be exposed to the contention of the borrower, under any circumstances, that diplomatic interposition is premature or unreasonable or at variance with common practice. A loan agreement may provide that in case of controversy, the issue shall be referred to the Secretary of State for adjustment by him.

The known approval of the government of the lender is of value, partly because of the removal of grounds of possible conflict between that government and the lender, should it become important for the latter to invoke the interposition of the former, and also because of the influence of such approval and cooperation upon the mind of the borrower. Frequently American lenders have voluntarily submitted the terms of proposed agreements to the Department of State. At times, as has been seen, American loans have been conditioned upon the cooperation of the Government of the United States.²⁴ Again, international banking arrangements between groups representative of several states have announced governmental undertakings to support those groups.²⁵ Recently, the Department of State has announced a desire that American concerns contemplating foreign loans inform it in due time of the essential facts and of subsequent developments of importance; and it has manifested a readiness to endeavor to say, in response to the inquiry of a prospective lender, in the light of information in its possession, whether or not there exists ground for objection to a proposed loan. Moreover, it has expressed belief that "in view of the possible national interests involved," it should have opportunity of saying to the underwriters concerned, should it appear advisable to do so, that there is or is not objection to any particular issue.²⁶ The reasonableness of this

²⁴ This was true in the case of a proposed loan to Honduras in 1911.

²⁵ See, for example, Text of China Consortium Agreement of October 15, 1920, this JOURNAL, January, 1922, Vol. 16, p. 4. See also note of Secretary Hughes to Messrs. J. P. Morgan and Company, March 23, 1921, declaring that the principle of cooperative effort for the assistance of China, through the operations of the Consortium, had the approval of the Government. Pamphlet No. 40, Division of International Law, Carnegie Endowment for International Peace, p. 74.

²⁶ See Department of State, *Statement for the Press on Flotation of Foreign Loans*, March 3, 1922. In this statement it was declared: "but it should be carefully noted that the absence of a statement from the Department, even though the Department may have been fully informed, does not indicate either acquiescence or objection.

"The Department of State can not, of course, require American Bankers to consult it. It will not pass upon the merits of foreign loans as business propositions, nor assume any responsibility whatever in connection with loan transactions. Offers for foreign loans should not, therefore, state or imply that they are contingent upon an expression from the Department of State regarding them, nor should any prospectus or contract refer to the attitude of this Government."

announcement ought to be apparent. It is due to the international and essentially public character of agreements arranging for the flotation of foreign public bonds in the United States, and to the direct effect of such transactions upon the economic and political relations of the United States with the governmental borrowers. American bankers are not likely to be blind to this circumstance or to be indisposed to act in harmony with the wishes of the Government.

THE EXTRADITION OF THE ASSASSINS OF THE SPANISH PREMIER DATO BY THE GERMAN REICH (FORT EXTRADITION CASE)*

By DR. WOLFGANG METTGENBERG

Oberregierungsrat in the Ministry of Justice of the German Reich

In the evening hours of the 8th of March, 1921, the president of the Spanish Council of Ministers, Don Eduardo Dato, was assassinated as he was bound from the Senate for his home. From a motorcycle occupied by three persons, which followed the automobile of the Prime Minister, numerous shots were fired on the Plaza de la Independencia at the rear of the automobile, penetrating the wall and upholstery and wounding Dato so severely that he died upon entering the first aid station. The investigations soon showed that the act had been committed by members of the *Sindicato Unico*. As perpetrators of the deed especially Pedro Matheu, Ramón Casanellas Lluch, Luis Nicolau Fort and his wife Lucía Joaquina Concepción were sought, but the competent authorities assumed that the number of participants was far greater. Pedro Matheu was soon seized on Spanish soil and arrested in Madrid. The traces of the remaining participants led by way of Barcelona over the national boundary into France, Germany and Russia. Warrants issued on March 24 and 26, 1921, and notices requesting apprehension given on August 1, 1921, did not at first achieve their purpose. In France, certain suspects were seized, but they had to be released upon expiration of the maximum period for preliminary arrest provided for in Article 7 of the French-Spanish extradition treaty of December 14, 1877. Ramón Casanellas Lluch had been warned by the premature publication of the arrest of accomplices and he had succeeded in escaping to the territory of the Russian Socialistic Federal Soviet Republic. On the other hand, the German police, supported by the Spanish, found in a suburb of Berlin Luis Nicolau Fort and his wife Lucía Joaquina Concepción, who had arrived from Paris under a false name on October 25, 1921, and had found refuge with supporters of the Communist Party. On October 29 they were temporarily seized with a view to subsequent extradition under Article 9, paragraph 1, of the extradition treaty between Germany and Spain of May 2, 1878. Other Spanish nationals also suspected of being implicated in the assassination of Dato, who were likewise taken into preliminary custody, were later released in accordance with Article 9, paragraph 2, of the German-Spanish treaty because the maximum period for temporary arrest expired

* Translated from the German by Mr. E. H. Zeydel, of Washington, D. C.

without the arrival of a demand for extradition from the Spanish Government.

Immediately after the temporary arrest of the married couple Fort, many indignant protests were raised in Germany and in Spain against the extradition of the prisoners to the Spanish Government. Especially the papers of the communistic party groups of Germany demanded the right of asylum for the fugitives in vociferous and violent articles. They all culminated in the assertion that the prosecuted persons were political refugees whose extradition was out of the question. For the legal consideration of the facts in the case these articles were of great value since they revealed how the fugitives and their party friends wished to have the assassination of Dato interpreted. Thus the *Rote Fahne*, the central organ of the Communist Party of Germany published in Berlin, wrote on November 3, 1921 (No. 504):

Never should the German proletariat permit the comrades Luis Nicolau Fort and Lucía Joaquina Concepción to be extradited to the Spanish hangmen. In the first place it has not been proved that the two Spanish comrades are guilty of the deed charged to them. But even if they participated in the execution of the death sentence of the former Spanish Premier Dato, they shall not be extradited.

Dato was responsible for the countless bloody deeds against Spanish workers that were perpetrated during his premiership. He was not only responsible for them, he was the soul of a terrible reign of terror against the Spanish proletariat, especially against the organized Spanish proletariat.

Dato was not murdered; he was sentenced to death by decision of the organized Spanish proletariat. For the Spanish trades unions knew of no other solution; since they did not have the power to carry out a revolution, they opposed the terror of the government and the capitalists with their own terrorism.

Those who carried out the death sentence against Dato acted out of a feeling of solidarity with the shamelessly oppressed and cruelly maltreated Spanish proletariat. Their deed was a political one.

In a protest meeting called by Berlin syndicalists it was stated on November 8:¹

Premier Dato established a reign of terror such as even Spain had never before experienced. Acts of deportation, shooting and torture were committed without number. The shooting of Dato was an act of necessity on the part of Spanish proletarians driven to desperation.

Again, on February 1 it was stated in the *Rote Fahne* (No. 54):

. . . The shooting of Dato was a political crime which was provoked by the shameful deeds committed by the Spanish Government under the premiership of Dato against the Spanish proletariat. In such a case the Spanish-German treaty of extradition does not provide for the extradition of those implicated in the political offense.

¹ Compare *Rote Fahne* of Nov. 10, 1921, No. 512.

With these utterances of the German communists who took the side of the prisoners, the sentiments of their Spanish partisans, as communicated to Germany, agreed. The central office of the Communist Party of Spain in Madrid sent a letter on November 3, 1921, to the central office of the Communist Party of Germany² in which, after repeating the reasons alleged for the commission of the act, the following appeal was made:

The Spanish Government demands the extradition of Nicolau and his wife. We know that the Communist Party of Germany will intervene strenuously in this matter. An immediate and decisive intervention on the part of the Communist Party of Germany might hinder the German Government from extraditing the accused to the Spanish Government.

It is not an offense against ordinary law, it is a political offense. The laws of extradition do not apply to political offenses.

The life of Nicolau and his wife, the freedom of many working comrades is in danger. You must save them. The Communist Party can act, it must act. Not only for reasons of solidarity, but also for political reasons which will have an important effect upon the development of the Communist Party of Spain.

The National Confederation of Workers of Spain issued the following proclamation to all workers of Germany:³

Comrades! The Spanish Government has had the German police in Berlin arrest our comrades, Luis Nicolau Fort and Lucía Joaquina Concepción, who are suspected of being the originators of the political attack against the Spanish Premier Dato. The Spanish Government immediately made a demand for extradition, in order that they might be sentenced in Spain.

The German proletariat, the men with hearts and ideals, cannot permit such a violation of the international right of asylum for proletarian refugees by the democratic government. You must know, comrades of Germany, that for two years the organized proletariat of Spain is suffering from the same terrible White Terror as the Hungarian proletariat under the Horthy régime of violence. For two years our best fighters have been systematically murdered on the street when on their way home from work. By the thousands they are imprisoned, tormented, tortured in the prisons and police stations.

We do not know whether the arrested comrades really took part in the attack against Dato. But even if they were the perpetrators, their act must be considered political, as an answer to the many hundreds and thousands of victims murdered by the reactionary Spanish Government and the Spanish military. Workers, brothers in Germany, demand of the German Government that it shall not deliver the comrades over to the executioner and the Spanish inquisitors.

Meanwhile, the official treatment of the matter took its course. On November 7, 1921, the German Government received a request through diplomatic channels to extradite to the Spanish Government the Spanish nationals Luis Nicolau Fort and his wife Lucía Joaquina Concepción, who

² Reprinted in the *Rote Fahne* of Nov. 13, 1921, No. 521.

³ *Ibid.*, No. 506.

had been taken into preliminary custody. The request for extradition was based upon a warrant of the examining judge in Madrid, dated March 26, 1921, which contained the charge of murder against Fort in the sense of Article 418 of the Spanish Penal Code of June 17, 1870, and, with regard to his wife, the charge of participation in the murder. Besides this, the warrant contained a description of the more detailed circumstances of the assassination of Dato.

The Spanish Embassy in Berlin supplemented these documents by pointing to the many newspaper utterances against extradition of the fugitives and using them as evidence of the necessity for their extradition. It emphasized the fact that Premier Dato was not murdered in the course of political disturbances of any kind, but that the assassination must rather be interpreted as a terroristic act of revenge. In Catalonia, it stated, the syndicalists had murdered hundreds of employers within half a year. Furthermore, when the originators of such assassinations had been arrested, they murdered, a few days later, the officials who had taken part in the arrest. They then murdered the judges who dared to sentence a perpetrator, and had also threatened the governors of the provinces with the same fate. The murder of the Premier, the embassy declared, was a link in the chain of these acts of violence, and it, too, had solely the purpose of intimidation. Besides, the embassy thought it incomprehensible that certain newspapers in Germany should describe the condition of the workingmen in Spain as desperate and Dato as their enemy, for it was stated that in Spain the greater part of the laboring class decisively turns its back upon the machinations of the syndicalists, and that in part the laborers have even of their own accord taken it upon themselves to proceed by means of self-help against the terrorism of the *Sindicato Unico*. The embassy asserted that Dato, as Minister of the Interior and later as Prime Minister, especially furthered social legislation in Spain. In the memorial address delivered at his grave it was rightly emphasized how tragic it was that Dato, who placed his energy particularly at the service of the working population, was murdered with gross ingratitude by men who counted themselves as members of the working class.

From the legal point of view, the embassy pointed out that the German-Spanish extradition treaty did not make political crimes susceptible to extradition. Formerly political crimes were conceived as crimes which were inspired by a political movement. Nowadays the theories first recognized in Belgium are followed, according to which political crimes are those directed against a political institution as such, as the existence or security of the state, representatives of the sovereignty of the state or political rights of the citizens. According to the Spanish penal laws, murder is not treated as a political crime, regardless against whom it is committed. To be sure, a non-political crime may be connected with an essentially political crime and it is then treated as a so-called connected crime, just as the essentially

political crimes. But in the case of Dato's assassination we have an isolated crime having no connection with a political act. At any rate, it cannot be said that the extradition is legally inadmissible if such a connection is nevertheless assumed. Rather is extradition justified in this case because of the special seriousness of the crime. The real character of the deed is described by the expression "social" or "anarchistic crime." It is one of those deeds aiming at the forcible destruction or revolution of present human society, and hence opposed to every form of government.

For the practise of extradition among the states, the embassy continued, such deeds are increasingly considered as common by the writers on international law (Bluntschli, Martens, Wahlberg, Kohler, Seuffert, Lammasch, Langhard, Garraud, Vidal, Diena). The practise of the English and Swiss courts has accepted these views. In state treaties, too, extradition of anarchistic criminals has recently been stipulated in a number of instances (*e. g.*, Articles 2 and 13 of the draft of a treaty drawn up on January 28, 1902, at the Second Pan American Conference in Mexico; Article 4 of the extradition treaty between Spain and Cuba of 1905; Article 3 of the extradition treaty between the Central American States of December 20, 1907; Article 3 of the extradition treaty between the German Empire and Paraguay of November 26, 1909; Article 3 of the extradition treaty between the German Empire and the Ottoman Empire of January 11, 1917.)

The counsel for the fugitives declared their extradition to be inadmissible. This declaration relied especially on Article 6, paragraph 2, of the German-Spanish extradition treaty, which reads:

An attack against the head of a foreign government or against members of his family shall be considered neither as a political offense nor as one connected with such an offense, if such attack bears the character of homicide, murder, or poisoning.

The Spanish Premier, it was said, could not possibly be considered as the head of a foreign government. The exception provided in the treaty is, therefore, not applicable in the present case. The assassination of Dato must consequently be considered a political offense. Counsel also submitted an expert opinion of Dr. Hans Wehberg taking the point of view that the extradition of the prosecuted persons was legally inadmissible. Wehberg argued that the attack upon Dato aimed to shake the authority of the Spanish state and that the participants endeavored to overthrow the constitution of Spain. Extradition can therefore be contemplated only if the theory is adopted that anarchistic crimes should never be considered political. But this theory has hitherto been strongly opposed in Germany. Nor has it been sufficiently adopted as yet in other places to warrant its incorporation into international law. The fugitives should, therefore, as political offenders, enjoy the right of asylum.⁴

⁴ This expert opinion is published in the weekly periodical *Der Sozialist*, Vol. 8, nos. 8-9, p. 144.

From the very beginning, the German parliaments showed a lively interest in the question of the extradition of the Dato assassins. Especially in the Reichstag, the ministers concerned were given occasion to express themselves on the various questions which stirred the public. As early as November 5, 1921, a few days after the preliminary arrest of the fugitives, several members of the Independent Social Democratic Party and the Communist Party of Germany in the Reichstag submitted the following question to the government.⁵

The syndicalists Fort and Concepción, prosecuted by the Spanish Government, have been taken into custody by the political department of the Berlin police.

According to press despatches from Madrid, the Spanish Government has already made a request for extradition. According to Berlin press reports, there are "doubtful points" in the minds of officials with regard to the German-Spanish extradition treaty.

From the text of this treaty it appears clearly that in formal law there is not the least occasion for extraditing the two syndicalists.

Is the German Government willing to order the release of the two syndicalists?

The German Government made the following oral declaration on November 18.⁶

The German Government immediately passed the request for extradition presented by the local Spanish Embassy to the Prussian State Ministry. The latter is at the present time engaged in studying the case. As long as this examination is pending, a release is out of the question.

On December 22, 1921, a Social Democratic delegate of the Reichstag inquired of the German Government.⁷

According to newspaper reports, it is intended to extradite to the Spanish Government the Spaniards charged by the Spanish Government with participation in the assassination of Premier Dato.

Are these reports true?

How does the German Government plan to justify the extradition of these political offenders? Has it, assuming the correctness of the report, taken steps to hinder a punishment of the extradited persons which would be opposed to the feelings of large elements of the people in Germany?

A written reply is sufficient.

The Foreign Office did not answer until March 1, 1922, when it made the following communication:⁸

The request of the Spanish Government for extradition of the two Spanish nationals Nicolau Fort and Joaquina Concepción, prosecuted for participation in the assassination of the Spanish Premier Dato, was

⁵ Printed documents of the Reichstag, 1920-21, No. 2929.

⁶ Stenographic Reports, p. 5065.

⁷ Printed documents of the Reichstag, 1920-21, No. 3278.

⁸ *Ibid.*, 1920-22, No. 3741.

based on Article 1, No. 1, of the German-Spanish extradition treaty of May 2, 1878 (*Imperial Law Gazette*, p. 213).

The request was acceded to after a detailed examination of the facts of the crime charged against the fugitives had shown that none of the exceptions provided for in the treaty which exclude extradition apply to the case. In this connection, attention may be called to the exhaustive statements of fact and law made by the Minister of Justice in the Reichstag sessions of February 23 and 24 in the discussion of the budget of the Ministry of Justice.

Accordingly, the extradition could not be made dependent upon any restricting conditions. But upon communication of the granting of the extradition, it was expressly declared to the Spanish Embassy that it is the urgent desire of large elements of the German people that a possible death sentence pronounced against the extradited persons should not be executed.

As a matter of fact, the extradition of the married couple Fort was granted by the German Government in the middle of February, 1922, and carried out by the Prussian Government. The French Government had already previously sanctioned the transit of the prosecuted persons through French territory. Consequently, the conveyance to Madrid took place by way of France. Shortly before the discussion of the budget of the Ministry of Justice this had become known to the public. In the Reichstag a deputy of the Communist Party excitedly demanded that the government should justify the extradition immediately and that the Reichstag should forthwith express its opinion with regard to the extradition. The Minister of Justice declared himself ready to discuss the extradition of the two Spaniards in connection with the debates on the budget of his ministry.

The deputies who spoke on the budget on February 23 and 24, 1922, discussed the extradition case in more or less detail. The Majority Socialist leader declared that the extradition was not in keeping with the expectations of his party friends, but that he would refrain from criticism until he knew for what reasons the government reached this regrettable decision, namely, of refusing the right of asylum to the Spaniards. The speaker of the Independent Social Democratic Party, who had acted as counsel for the prosecuted persons, made a strong protest against the extradition. He declared that the government had disregarded the legal scruples arising against the extradition out of the German-Spanish treaty; that it had ignored the expert opinion of Dr. Hans Wehberg and the demonstrations of protest made by the socialist workingmen; that even the party friends of the Minister of Justice disapproved of the extradition; that it is imperative that a German law should define the conditions of extradition. Before the close of the session, the Minister of Justice made the following declaration, as he had announced he would:⁹

The right of asylum, the eminent right of the state to offer prosecuted persons a place of refuge, must be especially sacred to a democratic

⁹ Stenographic Reports, p. 6042.

republic in which persons previously prosecuted are themselves members of the government. The German Reich must feel most scrupulously bound to preserve its right of political asylum, but it must feel no less bound to observe most scrupulously its contractual obligations, in order to prove that, for the German Reich, treaties, including extradition treaties, are not scraps of paper, especially at the moment when it is about to draw from a similar legal situation consequences identical to those drawn by Spain with regard to us, namely in the question of the extradition of the Erzberger murderers.

In this extradition we are unfortunately dealing, not with a question of human sympathy and still less with a question of politics. We are dealing with a question of law, of a binding treaty, of international good faith. Allow me to present to you very calmly and objectively the legal situation.

The extradition took place on the basis of the German-Spanish extradition treaty of 1878, the 6th article of which reads:

"The provisions of the present treaty are not applicable to such persons as have become guilty of any political crime or offense. A person who has been extradited for a common crime or offense shall therefore in no case . . . be tried or punished in the state to which he has been extradited for a political crime or offense committed by him prior to the extradition, nor for an act connected with such a political crime or offense."

Hence you see that the exception to the duty of extradition covers two groups of cases, on the one hand political offenses, and on the other hand offenses connected with such political offenses.

The political offenses, the first group, must be interpreted in the narrow sense of this definition. Political offenses in this narrower sense are offenses committed directly against the state, such as high treason, treasonable crimes, hostile acts against friendly states. (Interruptions on the extreme left: Where do you get that? Where is that written?).—I shall reply to you presently; it will appear from the connection.—It would be useless to mention the connected deeds beside the political offenses if these political offenses were to be understood in a broader sense, so that the latter would include the former.

We now come to the second group of acts, those connected with a political crime or offense. The question arises: where is the political crime or offense with which the deed of the alleged murderers of Dato is connected? Where is the actual or planned crime of high treason of which this murder forms a part? According to the description which not only the Spanish Embassy, and in connection with it the German Embassy, but also the communist press has given, we are not concerned with a deed which is a direct or indirect preparation for a definite crime of high treason, but a deed which, to be sure, was committed for a political motive, for the motive of political revenge, but not for a political purpose. Connected deeds are only such deeds as serve the purpose of a political crime, whether this crime be actually carried out or merely planned. (Repeated interruptions at the extreme left).

Ladies and Gentlemen, I have the notion that these juridical explanations by me, who during my short incumbency as minister have already gained quite a reputation among you as a reactionary, are not making any particular impression upon you. But allow me to refer

to a scholar of the importance of colleague Schücking, whose authority must be unimpeachable for you, too.

Now a little while ago someone interrupted me by mentioning the expert opinion of Dr. Wehberg, whom I esteem highly. But this opinion misses the decisive question entirely. It endeavors to show that not every anarchist and every assassin should be extradited; in other words, it argues against a point of view which does not form the basis of our conception at all. The whole argument of Wehberg, who stands alone with his point of view, disregards our point of view entirely.

Ladies and Gentlemen! I readily admit that the result which the government had to reach is exceedingly regrettable not only for humane but also for juridical reasons. Let us express it drastically. If these alleged assassins of Dato had gone further, they would have fared better. If their deed had appeared to be part of a conspiracy of high treason, their extradition would have been impossible. But since their deed was not the realization of a developed treasonable intent, and consequently not a deed connected with a political offense, the extradition had to take place.

Precisely this case will give us occasion to revise our laws of extradition. An extradition law is already in preparation which endeavors to define the conception of a political offense and on which our future extradition treaties will have to rely and on the basis of which the existing extradition treaties may be revised.

An unbending law has obliged us to extradite the alleged assassins of Dato. But we have endeavored to emphasize the principles of humanity as far as possible, over and above the rigid demands of the treaty. The solemn wish of the government has been expressed to the Spanish Ambassador that a possible death sentence against the two Spaniards may not be executed. I believe that that is not only the wish of the government, but also the desire of large elements of the German people, who condemn the murder, regardless of the causes for which it may have been committed, as far as it is not connected with a willingness for self-sacrifice, but who do not wish to see those who commit a crime because of their conviction, no matter how misguided this conviction may be, placed on a par with common murderers.

On the following day the discussion of the budget of the Ministry of Justice was continued. Again many of the speakers touched upon the extradition case. The deputy of the Centre Party was of the opinion that the legal explanations of the Minister of Justice were not open to any justified objections. The speaker of the German Democratic Party also declared the statements of the Minister to be correct. On the other hand, the deputies of the Communist Party opposed the speech of the Minister. Deputy Dr. Herzfeld said among other things:¹⁰

The German-Spanish extradition treaty stipulates in Articles 1 and 2 the crimes and offenses, common crimes and offenses, on account of which extradition may take place. In Article 6 we read:

"The provisions of the present treaty are not applicable to such persons as have become guilty of any political crime or offense."

¹⁰ Stenographic Reports, pp. 6072-73.

And furthermore the article says that the treaty is not applicable to an act connected with such a political crime or offense. But then comes the paragraph which the Minister of Justice failed to read to us, but which in my opinion is the decisive passage of this treaty with regard to political offenses. Paragraph 2 of Article 6 provides:

"An attack against the head of a foreign government or against members of his family shall be considered neither as a political offense nor as one connected with such an offense, if such attack bears the character of homicide, murder, or poisoning."

Here then the murder of the head of a foreign government and of the members of his family is mentioned, and it is provided that such a murder shall not be regarded as a political offense.

That is the so-called criminal attempt clause which the potentates had written into the treaties for each other in order to protect themselves and their families. But when this was written into the treaty there was no doubt that it was a prerogative of the heads of the monarchical governments at that time in Prussia, Germany and Spain and that, on the other hand, the murder of a prime minister, as is involved in the present case, is to be regarded as a political offense, if it was committed for political reasons, and should not lead to extradition.

To be sure, I am aware of the fact that there are German professors who interpret the conception of a political offense in the same manner as the Minister of Justice. He told us that political offenses are only such offenses as are aimed directly against the state itself, such as high treason and treasonable crimes, and that political deeds are only such deeds as were committed for political reasons. But there are other interpretations to the effect that a political crime is one committed for political motives, that is, where the subjective trend of the will is the decisive factor. Such opinions are also held, and it is certain that the restriction of the conception of a political crime, as defined by the Minister of Justice, originated in the old monarchy. When the reaction had made progress, when the ground of politics became increasingly unsafe not only in Germany but elsewhere, when the rulers felt themselves ever more endangered, the conception of political crimes was interpreted ever more narrowly and the interpretation was found which the Minister of Justice has now given. But today the Minister of Justice used an expression which I would wish he had applied to this matter. He said that it is the duty of law to interpret legal concepts in accordance with the living development of things. If we overthrew the old monarchy, if we have had a revolution, if the revolutionaries have become the government, then I think it is the duty of the Minister of Justice, a representative of a once revolutionary party, to revise these old conceptions in accordance with the new times, to interpret the conceptions according to things as they are, and not, as was done in the old pre-revolutionary days, to hold down the revolutionaries and to protect the monarchies against revolutions, as is being done in this case by the extradition of the Spaniards.

The Minister of Justice has told us that fidelity to the treaty binds him to give this interpretation. I ask: where in this treaty is there anything about the interpretation given by the Minister of Justice? Not a word of it! It is a principle of international law that the interpretation must be given by the requested state—the Minister of Justice knows that better than I do—and not by the requesting state.

If the German Reich is requested to deliver revolutionaries over to a counter-revolutionary government, it is the duty of the republican democratic government in Germany to interpret this conception as befits a democratic republican government and not as an old counter-revolutionary government does. Mr. Minister of Justice, how can you be surprised that our judges are anti-republican if you yourself are at the head of this tendency?

The Minister of Justice replied to this:¹¹

Deputy Dr. Herzfeld has represented the extradition of the alleged murderers of Dato as a class judgment for which the Minister of Justice, and the Minister of Justice alone, is responsible. Let me emphasize that this extradition rests on a much broader basis. I should like to clear up the question of competency, especially because it has given rise to great misconceptions in the press.

The responsibility for granting the extradition is borne by the German Government, the responsibility for carrying out the extradition, by the Prussian Government. The German Government and Prussian Government were agreed in the question of extradition. In the German Government the Foreign Ministry attended to the correspondence, while the Ministry of Justice supplied the legal advice.

Now for the interpretation which deputy Dr. Herzfeld has given the extradition treaty. He relied upon the last paragraph of Article 6 of the treaty of extradition:

"An attack against the head of a foreign government or against members of his family shall be considered neither as a political offense nor as one connected with such an offense, if such attack bears the character of homicide, murder, or poisoning."

Would Deputy Herzfeld really deduce from this that all other murders beside those of a head of a state shall be considered political? The logical deduction from this clause is merely that other murders may be political or they may not be political. That is, there follows that very question, namely whether or not the conception of a political offense is involved, which I discussed in the previous session.

Colleague Herzfeld is also mistaken if he believes that in Switzerland and in England such an extradition would be quite impossible. Precisely such extraditions have taken place in Switzerland and in England. In Switzerland one of the accomplices in the assassination of King Humbert was extradited to Italy, although Switzerland does not possess the Belgium criminal-attempt clause, although Switzerland quite generally excludes extradition on account of political crimes; and similarly the anarchist Meunier was extradited by England for two bomb plots which he had carried out in Paris.

In connection with these discussions, the Communist Party introduced the following resolution in the Reichstag:¹²

The Reichstag is requested to resolve:

The murder of the Spanish Premier Dato, of which the Spaniards Luis Nicolau Fort and Lucía Joaquina Concepción are accused, is a

¹¹ *Stenographic Reports*, p. 6077.

¹² *Ibid.*, pp. 6055, 6071, 6085, 6126.

political act in the sense of the German-Spanish extradition treaty of May 2, 1878.

The Reichstag requests the Chancellor of the Reich to cause the Prussian Government to rescind the extradition of the aforementioned Spaniards.¹³

The resolution, on the two paragraphs of which separate votes were taken, was defeated. That ended the discussion of the matter in the Reichstag.

The debates on the case in the Prussian Diet were no less heated. As in the Reichstag, the members of the Communist Party here, too, put the following question as early as November 3, 1921:¹⁴

According to press reports, the Berlin police has arrested two Spanish nationals, Luis Nicolau Fort and Lucía Joaquina Concepción, who are alleged to be murderers of the Spanish Premier Dato. It is said that the government has the intention of extraditing these two alleged murderers.

Is the Ministry of State aware of the fact that the assassinated Dato caused thousands of Spanish workingmen to be executed for political reasons and that the attack against Dato must be considered a purely political offense?

Is the Ministry of State prepared to release immediately the two arrested Spaniards and not to grant a request of Spanish justice for their extradition?

The representative of the Prussian Ministry of State thereupon declared on February 14, 1922,¹⁵ that certain points must still be cleared up and that a final answer cannot yet be given. On February 23, 1922, the day on which the matter was also discussed in detail in the Reichstag, it became known that the extradition had meanwhile taken place. Therefore the Communists and Independent Social Democrats introduced the following resolution in the Prussian Diet:¹⁶

In spite of the fact that it was not obliged to do so, the Prussian Ministry of State has extradited the Spanish nationals Luis Nicolau Fort and Lucía Joaquina Concepción, falsely accused of the murder of the Spanish Premier Dato. The Ministry of State has thereby become guilty of a serious violation of international hospitality and degraded itself to the position of an accomplice of murderous Spanish justice.

The Diet is requested to resolve:

The return of the Spaniards Fort and Concepción shall be demanded, regardless of where they may be at the present time. After their return they are to be released immediately.

The immediate discussion which was demanded of this resolution, which was not on the order of the day, could not take place on the same day be-

¹³ Printed documents of the Reichstag, No. 3624.

¹⁴ Printed documents of the Prussian Diet, No. 1362.

¹⁵ Stenographic Reports, p. 6798.

¹⁶ Printed Documents of the Diet, No. 2190.

cause there was opposition to it.¹⁷ On the following day, too, the discussion was adjourned.¹⁸ Hence the extradition case was not discussed in detail in the Prussian Diet until March 6 and 7, 1922. The declarations which the Minister of Justice had made with regard to the matter in the Reichstag were known to the speakers. The deputies who spoke wished to know above all to what extent the Prussian Government had cooperated in the extradition. Furthermore the Communist and Independent Social Democratic parties had amplified their resolution for the return of the prosecuted persons as follows:¹⁹

The Diet is requested to resolve:

The Ministry of State is requested to forbid Prussian officials to accept in whole or in part the reward offered by the Spanish Government for the arrest and extradition of the Spanish nationals Fort and Concepción.

On March 6 the Prussian Minister of the Interior made the following declaration in the name of the Prussian Government:²⁰

The Prussian Ministry of State did not make any decision in the question whether the extradition of the Spanish nationals Fort and Concepción for the murder of the Spanish Premier Dato should be granted. The Ministry of State was rather of the opinion that, whereas the rights and duties involved in the treaty of extradition concluded with Spain on May 2, 1878, affect not Prussia but the Reich alone, the Reich must decide whether in the present case it considers the duty of extradition to be incumbent upon it on the basis of the extradition treaty. Since the Minister of Justice of the Reich in a detailed legal opinion has declared that this obligation exists, and since the Government of the Reich has by resolution taken the same point of view, there was no reason for the Prussian Government to oppose the request for extradition. It has acceded to the request in the conviction that thereby it was assisting the Reich in the observance of international treaties and in the pursuance of a definite, consistent foreign policy.

In the course of the further discussion, the member of the Deutsche Volkspartei, the former director of the legal division of the Foreign Office, Dr. Kriege, spoke on the question of the extradition. He said among other things:²¹

My party, like the Government of the Reich and the Prussian Government, takes the attitude that the question of extradition could be considered only in accordance with legal points of view, exclusive of all political considerations. That is, the two governments had to determine whether the Spanish murderers had to be extradited on the basis of the contractual obligations assumed by Germany. . . .

There can be no doubt that the *casus* of extradition was present if the murder originated from political motives but by its nature was

¹⁷ Stenographic Reports, p. 7457.

¹⁸ *Ibid.*, p. 7536.

¹⁹ Printed Documents of the Diet, No. 2239.

²⁰ Stenographic Reports, p. 7713.

²¹ *Ibid.*, p. 7713.

characterized as an act of revenge. For in this case the deed was not intended to further any political aims lying in the future, but rather was it the sole purpose of the deed to get revenge for the past conduct of the Premier. Now such deeds of revenge are characterized, not as political offenses, but as common crimes or offenses. That we are in fact dealing with an act of revenge follows not only from the declarations of the Spanish Government, but also, as the Minister of Justice has declared, from the statements of the communist press itself, which expressly traces the murder of the premier to his attitude toward the communists and describes it as an act of retribution. But in view of these facts which, according to the conscientious examination of our government, must be assumed to exist, the extradition could not be refused, bearing in mind our contractual obligations.

It must also be remarked that the French Government apparently takes the same point of view. Otherwise it would have been unable to consent to the conveyance of the murderers through its territory, for which in general the same prerequisites hold as for extradition.

Similarly as in the Reichstag, the resolutions of the radical parties of the left were defeated in the Prussian Diet.²² That ended the official German treatment of the matter, at least for the time being.

Up to the present time the German Reich does not possess an extradition law. As the Minister of Justice announced in the Reichstag, however, a German law of extradition is in preparation. But for the present, extradition in the German Reich is regularly a purely administrative matter. The highest administrative authorities decide without recourse to the courts whether a requested extradition shall be granted or not. In this they are not bound by existing treaty obligations and, as far as there are no constitutional obstacles, they may also grant extradition without a treaty or by exceeding the treaty obligations. The reasons which are decisive in individual cases for granting or refusing the extradition are generally not made public. In the present case, however, as a consequence of the parliamentary discussions, scholars and critics have abundant material at their disposal. In the past, too, individual extradition cases in Germany have stirred up feeling and led to fruitful political discussions. But the Fort case differs from these essentially in that here for the first time the German authorities through their highest responsible officials informed the parliaments with detailed legal data as to the measures taken by the government. That in the extensive partizan exploitation of the case in the Reichstag and Diet, the discussions often missed the real point at issue, was natural. Many of the speakers did not see, or did not want to see, that it was not a political or even partizan question, but that it concerned exclusively points of law of a most disputed and complicated nature.

Thus we must explain the repeated references to the allegation that Fort and his wife did not commit the deed of which they were accused, that the real perpetrators were in custody in Spain or in safety in Russia, and that

²² Stenographic Reports, p. 7760.

the extradition was inadmissible as long as the Spanish Government did not submit proof that the fugitives were involved in the assassination of Dato. These arguments disregarded the fact that in the general extradition procedure between the German Reich and Spain the question is not examined whether the fugitives are guilty of the deed on account of which extradition is requested. The basis of the request for extradition is the judicial warrant submitted through diplomatic channels and thus having all possible guarantees of being genuine. The German authorities were not competent to examine on their own accord whether the warrant against the fugitives was based on facts. The question whether the prosecuted persons were guilty of the act of which they were accused had to be disregarded entirely.

In other respects, too, the legal circumstances were misunderstood. It was assumed by many that the so-called criminal-attempt clause contained in the German-Spanish extradition treaty in Article 6, paragraph 2, was of material importance for the decision of the case. Deputy Dr. Herzfeld, for instance, in his remarks reproduced above, thought he could reproach the Minister of Justice for having disregarded the criminal-attempt clause. In fact he directly asserted that the inadmissibility of the extradition of the Fort couple followed from this clause. The reply of the government clears up this legal aspect of the case. The criminal-attempt clause is a limitation of political asylum. In the case of certain serious crimes against the head of a foreign government and the members of his family it is generally provided that they are not political, that they are in every instance subject to extradition. The murdered Premier Dato was not the head of the government in the Kingdom of Spain. Hence the criminal-attempt clause was not applicable in the present case. The exception made by this clause to the rule of political asylum goes just as far as it purports to go. It cannot be used for the conclusion that the murder of a minister, since this is not mentioned, or any murder other than that of the head of a state, must be considered political.

Finally, all the discussion on the extradition of anarchistic criminals was beside the point. The German-Spanish extradition treaty contains no anarchist clause, as is contained in some more recent treaties of the German Reich. Nor do any special agreements exist with the Spanish Government on the treatment of offenses which are to be considered anarchistic. Neither can it be claimed that the law of extradition of the civilized states has taken such a uniform stand with regard to anarchistic crimes that a recognized rule of extradition has been developed from it which would have to be observed by the German Reich and Spain. The constructions of the various states, as shown by their practise of extradition, are still too divergent for this. Consequently it could not be deduced from the assertion that the assassination of Dato was an anarchistic crime that the deed was not a political offense. Rather was it logical to deduce that, even as an anarchistic deed, the deed was subject to the general rules and might be political or

common, depending upon its essential character. Therefore, it was necessary to examine the facts of the case and to give the deed the character assigned to it by the German-Spanish treaty.

As a result of the statements of the Government of the Reich and of the Prussian Government, two principles can be laid down:

1. The deed charged to the fugitives by the Spanish Government does not belong to the class which is not subject to extradition according to Article 6 of the German-Spanish extradition treaty.

2. The consent for extradition is, according to the German Constitution, incumbent upon the Government of the Reich, not upon the Prussian Government.

Let us discuss each of these principles to some extent.

The provisions of the extradition treaty between the German Reich and Spain essential for a study of the legal question are as follows:

Article 1, paragraph 1:

The high contracting parties bind themselves by the present treaty to extradite to one another in all cases admissible according to its provisions, those persons who, on account of one of the punishable acts mentioned hereinafter, committed in the territory of the requesting state and punishable there, have been condemned or indicted or cited for judicial examination, whether as perpetrators or accomplices, and are sojourning in the territory of the other party, to wit: 1. on account of homicide or murder, . . .

Article 6, paragraph 1:

The provisions of the present treaty are not applicable to such persons as have become guilty of any political crime or offense. A person who has been extradited for one of the common crimes or offenses mentioned in Articles 1 and 2 shall accordingly in no case be tried or punished in the state to which he has been extradited for a political crime or offense committed prior to the extradition, nor for an act connected with such a political crime or offense, nor on account of a crime or offense not provided for in the present treaty; except in case the person in question after having been either punished for or definitely acquitted of the crime or offense for which he was extradited, remains in the country for three months, or, after leaving it, returns again to it.

The history of the genesis of the Spanish-German extradition treaty shows that the German and Spanish Governments used as a basis for the negotiations the German-Belgian extradition treaty of December 24, 1874. The text of the treaty provisions shows that to a great extent it is identical with its model.²² In particular, the articles here mentioned are absolutely identical with the corresponding provisions of the German-Belgian treaty. In the matter of interpretation, we shall have to revert to this older treaty, which is governed principally by Belgian legal conceptions. The extent of political asylum in Article 6 of the treaty can, therefore, be determined only

²² Printed documents of the Reichstag, 1878, No. 252; Stenographic Reports, 1878, p. 1429.

by taking into consideration the Belgian law of extradition. The manner in which political asylum arose and developed in Belgium has been described with unsurpassable accuracy by the late Ferdinand von Martitz in the second part of his *Internationale Rechtshilfe in Strafsachen* (1897). His masterly exposition gives a clear picture of the Belgian legal conception and offers a safe basis for the interpretation of Article 6 of the German-Belgian and German-Spanish treaties required in this case. The result is briefly as follows.

The sphere of offenses not subject to the obligation of extradition includes, in the first place, the crimes and offenses which are political by their nature. They are—without regard for the motive or purpose of the perpetrator—such offenses as are directed against a political possession in law. They can usually be found in the penal codes of the states without great difficulty, even though they are not expressly defined therein as political offenses. German law, in agreement with the motives of the draft of a penal code for the North German Confederation,²⁴ considers the following to be by their nature political offenses: high treason, treasonable crimes, hostile acts against friendly states, criminal acts directed against citizens' rights and against the authority of the state as such. Franz von Liszt has summed them up more briefly as follows: All premeditated crimes directed against the existence or security of the state, against the head of the state, or the political rights of the citizens.²⁵ Clearly the murder of the Spanish Premier does not come under this group.

But the treaty also excludes from extradition offenses connected with a political crime or offense. We are dealing here with offenses characterized by a translation of the conception of *faits connexes à un crime ou délit politique* (acts connected with a political crime or offense) developed in the Belgian law of extradition. There are included here—in contrast to offenses political by their nature—offenses that by their nature are common, which by an inherent connection with a political offense are to share the treatment of the latter in matters of extradition. Common offenses are in this sense connected with a political offense if they are intended to prepare, support or conceal an offense political by its nature. An offense that is by its nature common, which by itself alone fulfils its purpose, does not possess this connection, although its motive or purpose could be termed political. The murder of Premier Dato is by its nature a common offense. Consequently, if an examination of the circumstances under which it was committed should show that it has an inherent connection with an offense that is by nature political, it would, by virtue of its character as a connected crime, not be subject to extradition. The Minister of Justice in his speech of February 23 before the Reichstag announced that, according to the official reports from Spain to the German Government, the murder of Dato, as well as the other

²⁴ Printed documents of the Reichstag, 1870, No. 5, p. 84.

²⁵ *Das Völkerrecht*, 11th edition, Berlin, 1918, p. 233.

acts of the syndicalists, were intended as acts of revenge and terrorism. As a matter of fact this agrees with what the partizan friends of the prosecuted persons in Spain and in Germany published with regard to the reasons for the murder. According to this, the deed was to be the execution of a death sentence pronounced by the syndicalists against Dato. Hence the deed fulfilled its purpose by itself alone. There is no recognizable connection with any political crime. Therefore, the obligation of extradition had to be recognized as existent, in accordance with the treaty.

The second result of the discussions is in the field of German internal competency. The new constitution of the German Reich of August 11, 1919, leaves doubt as to whether the German Reich has remained a federal state or has become a decentralized unified state. In any case the position of the former individual states in constitutional law, which are today designated as *Länder*, has been modified to a great extent with a view to a greater unification of the Reich. The same is true with regard to extradition. For extradition it is important that Article 6 of the national constitution has given the Reich as such the exclusive right of legislation on the subject of extradition and foreign relations in general. The German *Länder* do not therefore possess the power to pass extradition laws or to conclude extradition treaties with foreign states. Similarly, Article 78 of the national constitution provides that the relations to foreign states are exclusively the concern of the Reich. The German *Länder* cannot therefore negotiate in an individual case with a foreign country with regard to the duty of extradition incumbent upon the Reich. The question of international law whether a treaty entails extradition or not can only be decided by the Reich itself. The statement of the Minister of Justice of February 24, made in the Reichstag, in which he cleared up the question of competency: "The responsibility for granting the extradition is borne by the Government of the Reich" describes correctly the legal situation as established by the constitution. This manner of determining competency is in agreement with the practise of the United States and Switzerland.

The Fort case has already played an important part as a prejudication. It was immediately followed by the Boldrini case. The Italian Government prosecuted the Italian national Giuseppe Boldrini on the charge of participation in the Milan dynamite plots in the execution of which on March 23, 1921, about 30 persons were killed and 80 injured. Boldrini was arrested on German soil. The Italian Government requested his extradition. The perpetrator of the crime and his party friends asserted that it was a political crime since the deed had been committed for political reasons. The German Government extradited Boldrini on May 4, 1922, on the basis of the German-Italian treaty. The treaty contains the provision for the non-extradition of political criminals in the same form as the German-Spanish and the German-Belgian treaties. In general, the great majority of the existing extradition treaties of the German Reich contain the same provisions as to political

asylum as these treaties do. The states that have made similar agreements with the German Reich will find in the discussions of the Fort case valuable material for the interpretation of the provisions as to political asylum. Whether the new German extradition law announced by the Minister of Justice will be based upon the same theories it is still impossible to say.

ORDERS IN COUNCIL AND THE LAW OF THE SEA

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II

With the victorious growth of Napoleon's military power subsequent to the disastrous rupture in May, 1803, of the peace concluded at Amiens on March 27, 1802, the emperor determined to revive and develop certain conceptions already illustrated in decrees of the Directory and Consulate which had looked to the subversion of England through limitation or annihilation of its sea-borne commerce. French tradition was familiar with such a purpose through the contests, in the preceding century, of Louis XIV with Spain, then the mistress of a vast maritime traffic. For Napoleon, Great Britain's trans-atlantic trade furnished a ready object of attack as well through cruiser warfare on the open ocean as by oppressive commercial regulation at home. Accordingly a decree of the Consulate on June 30, 1803, forbade all importation from England, and a month later French ports were closed to all ships coming from Great Britain or having even touched there; while on February 6, 1805, an imperial proclamation laid a heavy tax on colonial products, to be soon followed by yet more oppressive measures.

In March, 1806, the Electorate of Hanover was wrested from the British Crown and annexed to Prussia by order of Napoleon, and the British flag was promptly excluded from the electoral ports. To this the British Government, Fox being Secretary of State for Foreign Affairs, replied by announcing a blockade of Prussian harbors, together with an embargo of all Prussian ships found in Great Britain, and on May 14th an order in council directed the seizure of such vessels wherever found, and on May 16th a further order announced a blockade of the entire west coast of Europe under French control. This measure was intended to meet the views of the British mercantile class, now grown jealous of the extensive share which was being assumed by the United States in trans-atlantic commerce; but it was found, in view of American protests, expedient to so limit, on the following September 25th, the geographical aspects of Fox's blockade that it should be restricted to such ports along the English Channel and North Sea as could be effectively controlled by British cruisers, thus actually bringing the blockade in harmony with accepted views of international law.

Notwithstanding England's technically correct position as settled by this last blockade order, two months later, on November 21, 1806, Napoleon deemed himself sufficiently powerful, the old Germanic Empire having col-

lapsed in the preceding August and the Prussians having been crushed at Jena in October, to launch a decree from the Prussian capital intended as a formal inauguration of what came to be termed the "Continental system." Briefly, the decree declared a general blockade of Great Britain and consequent prohibition of all traffic in British merchandise even though actually the property of neutrals; nor was any vessel proceeding from Great Britain or its possessions to be allowed entrance to a French port or one anywhere under imperial control. The text of the decree is as follows:

IMPERIAL CAMP, Berlin,
November 21, 1806.

Napoleon, Emperor of the French and King of Italy, considering:

1. That England does not admit the right of nations as universally acknowledged by all civilized people;

2. That she declares as an enemy every individual belonging to an enemy state, and, in consequence, makes prisoners of war, not only of the crews of armed vessels, but also of merchant vessels, and even the supercargoes of the same;

3. That she extends or applies to merchant vessels, to articles of commerce, and to the property of individuals, the right of conquest which can only be applied or extended to what belongs to an enemy state;

4. That she extends to ports not fortified, to harbors and mouths of rivers, the right of blockade, which, according to reason and the usage of civilized nations, is applicable only to strong or fortified ports;

5. That she declares blockaded, places before which she had not a single vessel of war, although a place ought not to be considered blockaded but when it is so invested as that no approach to it can be made without imminent hazard; that she declares even places blockaded which her united forces would be incapable of doing, such as entire coasts, and a whole empire;

6. That this unequalled abuse of the right of blockade has no other object than to interrupt the communications of different nations, and to extend the commerce and industry of England upon the ruin of those of the Continent;

7. That this being the evident design of England, whoever deals on the Continent in English merchandise favors that design and becomes an accomplice;

8. That this conduct in England (worthy only of the first ages of barbarism), has benefited her, to the detriment of other nations;

9. That it being right to oppose to an enemy the same arms she makes use of, to combat as she does, when all ideas of justice and every liberal sentiment (the result of civilization among men) are disregarded;

We have resolved to enforce against England the usages which she has consecrated in her maritime code.

The present decree shall be considered as the fundamental law of the empire, until England has acknowledged that the rights of war are the same on land as at sea; that it cannot be extended to any private property whatever, nor to persons who are not military, and until the right of blockade be restrained to fortified places, actually invested by competent forces;

IMPERIAL DECREE OF THE 21ST NOVEMBER, 1806.

Art. 1. The British islands are declared in a state of blockade.

Art. 2. All commerce and correspondence with the British islands are prohibited. In consequence, letters or packets addressed either to England, to an Englishman, or in the English language, shall not pass through the post office, and shall be seized.

Art. 3. Every subject of England, of what rank and condition soever, who shall be found in the countries occupied by our troops, or by those of our allies, shall be made a prisoner of war.

Art. 4. All magazines, merchandise, or property whatsoever belonging to a subject of England, shall be declared lawful prize.

Art. 5. The trade in English merchandise is forbidden. All merchandise belonging to England, or coming from its manufactories and colonies, is declared lawful prize.

Art. 6. One half of the proceeds of the confiscation of the merchandise and property declared good prize by the preceding articles, shall be applied to indemnify the merchants for the losses which they have suffered by the capture of merchant vessels by English cruisers.

Art. 7. No vessel coming directly from England, or from the English colonies, or having been there since the publication of the present decree, shall be received in any port.

Art. 8. Every vessel contravening the above clause, by means of a false declaration, shall be seized, and the vessel and cargo confiscated as if they were English property.

Art. 9. Our Tribunal of Prizes at Paris is charged with the definitive adjudication of all controversies which may arise within our empire, or in the countries occupied by the French army, relative to the execution of the present decree. Our Tribunal of Prizes at Milan shall be charged with the definitive adjudication of the said controversies which may arise within the extent of our kingdom of Italy.

Art. 10. The present decree shall be communicated by our Minister of Exterior Relations to the Kings of Spain, of Naples, of Holland, of Etruria, and to our allies, whose subjects, like ours, are the victims of the injustice and the barbarism of the English maritime laws.

Our Ministers of Exterior Relations, of War, of Marine, of Finance, of Police, and our Postmaster General, are charged each in what concerns him with the execution of the present decree.¹

The preamble arraigns Great Britain for various violations of international law, and then proceeds to lay down a series of proposed rules of action designed to meet such transgressions by a complete commercial isolation of England, to whose traffic the Continent as a unit would thus be opposed. While the catalogue of British violations of principles declared to be funda-

¹ The British orders in council, together with English translations of those French decrees with which the present article is specially concerned, are found in the series entitled *American State Papers, Foreign Relations*, and are in the first three volumes, chiefly in Vol. III. The British orders are also preserved in the serial volumes of the *Annual Register*, as well as in the appropriate volumes of the great treaty series edited by de Martens and others. The original French texts are to be found in the *Bulletin des lois de l'empire français*, series 4, Vol. VII, published in Paris, 1808.

mental in the law of nations was palpably intended to influence those who knew little or nothing of international jurisprudence, it is not to be supposed that Napoleon himself labored under ignorance of his subject. Already as First Consul he had assumed much more than a nominal participation in the elaboration of the French Civil Code proclaimed to be law on March 21, 1804, and though lacking any extended legal training or study, he had brought to the deliberations of the Code Committee over which he presided as chairman an astonishing capacity for grasping juristic conceptions, thus lending to the work as it progressed a character destined to form not the least of the Code's merits. We need not, therefore, be surprised at the self-assurance with which the emperor, in 1806, proclaimed international rules in harmony with his personal ideals but by no means part of the accepted law of nations.

The Berlin decree complains in the first place that Great Britain treats the crews of captured merchant vessels and even the supercargoes as prisoners of war. To this it may be replied that the progress of a century has indeed acknowledged the underlying justice of such a criticism, although it was not until much later that changes were formally admitted in the rules upon this important subject. Napoleon's statement, in 1806, however, was based not on a fact but rather expressed a hope. In any event, whatever may be considered in our day to be the rightful treatment of enemy merchant crews, there can be no contest as to what was the rule of the law of nations in 1806 and in preceding times, France itself having ever advocated the strictest rules of warfare. The French royal ordinance of 1543 expressly directed captors to bring in merchant crews along with their prizes, and the jurisprudence of the Revolution contained a similar regulation, as did the official French instructions for the Crimean War of 1854, the Austro-Italian War of 1859, and the Franco-Prussian War of 1870.² A similar principle was affirmed by both Prussia and Denmark in their Prize Rules of 1864, and was permitted by our own excellent Naval Code of 1900. It had, moreover, ever been the accepted British rule until the Second Peace Conference at The Hague in Convention XI (Restrictions on Capture in Maritime War) announced a more humane principle. Of this new departure, Professor Higgins in his *Hague Peace Conferences* at page 405 says: "Chapter III marks an important alteration in the law of maritime warfare. It is, apart from this convention, a well-recognized rule of international law that the officers and crews of captured enemy merchantmen are prisoners of war. The practice was justified on the ground that it deprived the enemy of men who might render service on board ships which might be used as transports or for purposes of supply, or in the fighting navy. The rule was generally applied without regard to the nationality of the persons captured."

In the second place, Napoleon declared that England wrongfully extends

² Cf. J. A. Hall's *Law of Naval Warfare* (London 1921, p. 122 seq.): Fauchille, *Traité de Droit International Public* (Paris 1921, Vol. II. p. 518 seq.)

the right of capture at sea to *private* property,³ whereas only what belongs to the *state* should be liable to be thus taken. It is undeniable that while this imperial complaint runs counter to a principle of maritime law familiar to everyone, it is nevertheless expressive of a deep-seated and genuine conviction on Napoleon's part, since in after years at St. Helena he records in his memoirs: "Il est à désirer qu'un temps vienne où les mêmes idées libérales s'étendent sur la guerre de mer et que les armées navales de deux puissances puissent se battre sans donner lieu à la confiscation des navires marchands, et sans faire constituer prisonniers de guerre de simples matelôts de commerce."

Thirdly, the English are accused of blockading unfortified localities whereas the right of blockade extends only "to strong or fortified ports."⁴ This complaint, nevertheless, quite loses sight, as has indeed been done in the recent great war, of what we may term the final cause of blockade which is by no means identical with the conception which evidently governed Napoleon's thought of *siege*. By the term *siege* we are to understand not merely the investment of a locality, but also a procedure involving attack with the object of forcing surrender as at Sebastopol, Plevna, or Port Arthur. But the primary end of blockade is the isolation of an enemy position, and such a course may have reference either to the ultimate reduction of the place or to a mere deprivation of its sources of supply thus contributing to the embarrassment of interior points. While, accordingly, there exists a patent analogy between *siege* and blockade, they are by no means always the same in purpose, and, consequently, while *siege* need manifestly be undertaken only where a belligerent is confronted by fortified works, blockade may be applied and carried out in a properly effective manner not only against an unfortified enemy seaport, but also against the entrance to an enemy river or to a long stretch of hostile coast.

Again, the preamble charges that England has announced a blockade where not even a solitary cruiser is stationed, that is to say, the blockade is by proclamation only, no attempt being made to render it actually effective in the sense of the rule which demands a permanent presence of one or more warships where entrance or exit is to be made dangerous or impossible.

While no candid mind will undertake a defense of blockade by proclamation only, it is not to be forgotten that such a practice, while essentially modern, by no means originated with Great Britain or even in the Napoleonic wars. It dates, indeed, from a comparatively recent period, and its first appearance may perhaps be assigned to the war between Spain and the Low Countries, when in 1584 the Dutch proclaimed a blockade of the Flemish coast of a wholly fictitious character. This was renewed in 1586, 1622, 1624 and 1630. Again in 1652 and 1656 the Dutch proclaimed a blockade of the coast of Great Britain, and in 1672 and 1673 a similar measure was launched against France, notwithstanding that ten years earlier the United Provinces

³ Cf. Hall, *loc. cit.*, p. 88.

⁴ Fauchille, *loc. cit.*, p. 939 *seq.*

had protested against such a blockade declared by Spain against all Portuguese ports; and on July 16, 1667, Holland concluded a treaty with Sweden, as it did in 1674 with England, laying down in plain terms the necessarily effective nature of blockade which should be so carried out as to bind all localities affected: "*Urbibus et locis ab una alterave parte obsidione juxta REALITER CINCTIS.*" But blockade founded on a mere proclamation addressed to neutrals appeared in the notable treaty of Whitehall, concluded by England with Holland on August 22, 1689, although in this instance the proclaimed threats were actually carried out despite vigorous neutral protests. In effect, the provisions of the treaty and proclamation were as severe as any later announced by Napoleon: all commerce with hostile France was prohibited, and since the carriage of enemy goods by neutral ships was held to involve the confiscation of the carrying ship as well as of the goods, neutrals suffered heavily; nor was it until the appearance of the first armed neutrality formed by the northern Powers in 1780 that milder practices became assured. Purely fictitious blockades indeed persisted during a great part of the eighteenth century despite announcements to the contrary in many formal treaties, as was the case in the Seven Years War when Great Britain in order to strengthen its "Rule of 1756" declared all French ports blockaded. This declaration was followed by the seizure of many neutral Dutch ships some of which, however, were afterwards restored, although the celebrated admiralty judge, Sir James Marriott, is said to have justified the practice of such announcements. While, however, the armed neutrality leagues of 1780 and 1800 were not themselves destined to survive the sudden destruction of Copenhagen and the capture of the entire Danish fleet by the British on April 2, 1801, Great Britain and Russia in a treaty made two months later (June 17) assented to a compromise admitting the important principle of *cruiser* blockade maintained by long distance patrol sufficient to measurably guard the belligerent position:

Art. III.—4. Que pour déterminer ce qui caractérise un port bloqué, on n'accorde cette dénomination qu'à celui où il y a, par la disposition de la Puissance qui l'attaque, avec des vaisseaux arrêtés ou suffisamment proches, un danger évident d'entrer.

That is to say, a blockade may be held legally responsive to a demand of effectiveness if so maintained as to practically close a specified area to all commerce. Such a blockade is readily distinguishable from (1) blockade by mere proclamation, (2) blockade where warships are permanently stationed outside a given port. Cruiser or long-distance blockade, that is, where the sea in the general vicinity of an enemy port or coast is so patrolled by warships as to be practically under continuous surveillance throughout its extent, would seem quite adequate to the necessities and possibilities of present-day warfare and more practicable than any blockade practices formerly recognized by the law of nations as solely legitimate.

But there was really in the autumn of 1806 no actual question of proclama-

tion blockade on the part of the British, since, as has been seen, an order in council of September 25th had confined commercial prohibition to a line of enemy coast which could be effectively guarded by British cruiser patrol.

On January 7, 1807, an order in council was promulgated by way of reply to Napoleon forbidding, on the principle of the "Rule of 1756," all belligerent coasting trade on the part of neutral merchantmen. In the following March the Grenville ministry, greatly weakened by the death of Fox in the preceding summer, resigned, and the Duke of Portland formed a Tory government, becoming Premier with Perceval as Chancellor of the Exchequer, Canning as Foreign Secretary, and Castlereagh as Secretary for War and the Colonies. The three last named members of the new cabinet were destined to be moving spirits in the development of British war policy. The principal orders in council of this period were actually drawn by James Stephen (1758-1832), Perceval's legal adviser and who had made a specialty of international jurisprudence as applied to colonial affairs. He had, for a time, resided and practiced law at St. Christopher's in the West Indies and had become closely identified with movements to abolish the African slave trade. He was a close friend of both Wilberforce and Brougham. In the troubled field of maritime disputes, therefore, Stephen came to occupy a leading position, and his little book *War in Disguise*, first published in 1805 and recently reprinted under the able editorship of Sir Francis Piggott (University of London Press, 1917), exercised a wide influence upon the political thought of the time.

Following is the text of the order:

AT THE COURT OF THE QUEEN'S PALACE, *January 7, 1807.*

Present, the King's Most Excellent Majesty in Council:

Whereas the French Government has issued certain orders, which, in violation of the usages of war, purport to prohibit the commerce of all neutral nations with His Majesty's dominions, and also to prevent such nations from trading with any other country in any articles the growth, produce, or manufacture of His Majesty's dominions; and whereas the said government has also taken upon itself to declare all His Majesty's dominions to be in a state of blockade, at a time when the fleets of France and her allies are themselves confined within their own ports by the superior valor and discipline of the British navy; and whereas such attempts on the part of the enemy would give to His Majesty an unquestionable right of retaliation, and would warrant His Majesty in enforcing the same prohibition of all commerce with France, which that Power vainly hopes to effect against the commerce of His Majesty's subjects, a prohibition which the superiority of His Majesty's naval forces might enable him to support, by actually investing the ports and coasts of the enemy with numerous squadrons and cruisers, so as to make the entrance or approach thereto manifestly dangerous; and whereas His Majesty, though unwilling to follow the example of his enemies, by proceeding to an extremity so distressing to all nations not engaged in the war, and carrying on their accustomed trade, yet feels himself bound, by a due regard to the just defense of the rights and interests of his people, not to suffer such measures to be taken by the

enemy, without taking some steps on his part to restrain this violence, and to retort upon them the evils of their own injustice;

His Majesty is thereupon pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, that no vessel shall be permitted to trade from one port to another, both which ports shall belong to, or be in the possession of France or her allies, or shall be so far under their control as that British vessels may not freely trade thereat; and the commanders of His Majesty's ships of war and privateers shall be, and are hereby instructed to warn every neutral vessel coming from any such port, and destined to another such port, to discontinue her voyage, and not to proceed to any such port; and any vessel, after being so warned, or any vessel coming from any such port, after a reasonable time shall have been afforded for receiving information of this His Majesty's orders, which shall be found proceeding to another such port, shall be captured and brought in, and, together with her cargo shall be condemned as lawful prize. And His Majesty's Principal Secretaries of State, the Lords Commissioners of the Admiralty, and the Judges of the High Court of Admiralty, and Courts of Vice-Admiralty, are to take the necessary measures herein as to them shall respectively appertain.

W. FAWKNER

On November 11 and 25, 1807, there appeared an additional and highly important series of orders in council announcing retaliation by general or proclamation blockade and prohibition of all trading with French or allied ports except through Great Britain or its colonial dependencies; at the same time the possession by a neutral of certificates of property origin in pursuance of the Berlin decree was made a cause of confiscation.

Again in reply to the British Government, Napoleon issued a decree from Milan on December 17, 1807, penalizing all vessels and their contents which should comply with Great Britain's orders either by submitting to visit and search or by touching at a British port, with the result that neutrals who might escape British cruisers on their way to a Continental port would ultimately be seized as contravening the emperor's commands.

It will be readily seen that while the belligerent Powers would each be sufferers by these proceedings, yet results equally or still more disastrous must ensue to neutrals, of whom the chief, if not the only one, was the United States, whose supply of manufactured articles from Europe and whose immensely valuable export traffic must surely be in large measure destroyed, notwithstanding that by the orders in council of November 25, 1807 and corresponding announcements of Napoleon, an iniquitous system of governmental licenses permitting commercial intercourse despite blockades sprang into existence on both sides of the English Channel, thus nullifying to a great extent the otherwise inescapable rigors of the situation. Of this situation Hildreth has given an admirable summary:

Orders in council, dated the 11th of November but not actually promulgated till the 17th, prohibited any neutral trade with France or her allies, in other words, with the whole of Europe, Sweden excepted, unless through Great Britain. All neutral vessels, whatever their

cargoes, bound to any port of France or her allies, were required, under pain of capture and condemnation, first to touch at some British or Irish port, and there to pay such re-exportation duties as might be imposed, and to obtain, by the payment of certain fees, a British license to trade to the Continent. Nor was any export to be allowed of the produce of France or her allies, except in vessels which had complied with the foregoing regulation. All such vessels which, previous to notice of this new system, had sailed for any hostile port, if fallen in with by any British cruiser, were to be ordered to some port of Great Britain or Ireland, or to Gibraltar or Malta, whence, having first paid such duties as should be established, they might proceed to their ports of destination; or, if they preferred it, they might land and enter their goods in Great Britain. A further ground of capture, after the lapse of sufficient time for the order to become known, was to be the having on board French consular "certificates of origin," required since the Berlin decree, as proof that the goods sought to be imported into France were not of British origin.

Although the plea of retaliating the issue of the Berlin decree afforded a colorable pretext for these orders, they were, in reality, but a further carrying out of that restrictive policy as to neutral commerce urged for some time past upon the British government by the greedy jealousy of the British colonial merchants and ship-owners, and of which the restrictions on the colonial carrying trade had been the first fruit. Their effect was to deprive American vessels of all their neutral advantages, and, so far as regarded the trade to Europe, to place them on the same level with British vessels. One advantage was indeed left them, in the supply of the French, Spanish, and Dutch colonies with provisions, lumber, and other American products, and the transport of the produce of these colonies for the supply of the United States: but the very lucrative carrying trade between these colonies and their mother countries, engrossed of late by American vessels, so much to the envy of the British ship-owners, was either entirely cut off, or made to circulate through Great Britain, subject to duties, transshipment, and other embarrassments.

To these orders Bonaparte very soon responded in a new decree, dated at Milan, invigorating and extending the decree of Berlin. This Milan decree pronounced every vessel "denationalized" and forfeited which should submit to be searched by a British cruiser; which should pay any tax, duty, or license money to the British government; or which should be found on the high seas or elsewhere, bound to or from any British port. Spain and Holland, with their usual subserviency, forthwith issued similar decrees.⁵

We here subjoin⁶ the first order of November 11, 1807.

The order in council of January 7, 1807, while intended as a prohibition to neutrals of enemy coasting trade, was quite susceptible in its wording of an interpretation which would have cut off neutrals from any enemy commerce whatsoever. While this infelicity of language was clearly pointed out in Parliament, no change was ever made in the text.⁷ President Jefferson was, therefore, justified in characterizing the order, in his annual message of

⁵ *History of the United States*, Vol. VI, Chap. XX, p. 33 seq.

⁶ See Appendix, page 579.

⁷ Cf. Mahan, *Sea Power in its Relations to the War of 1812*, Vol. I, p. 516 seq.

October 27, 1807, as "an interdiction of 'all trade by neutrals between ports not in amity with them, i. e. with the British'" and he added "England being now at war with nearly every nation on the Atlantic and Mediterranean seas, our vessels are required to sacrifice their cargoes at the first port they touch or to return home without the benefit of going to any other market. Under this new law of the ocean our trade on the Mediterranean has been swept away by seizures and condemnations, and that in other seas is threatened with the same fate." The wide extension of the decree of November 21, 1806 by that of December 17, 1807 given below practically forbade all commercial intercourse with England or with English goods, while England, in its turn, forbade all commerce between ports controlled by Napoleon or his allies save through some British port; and the Milan decree of December 17th of the same year announced seizure and confiscation of all neutral vessels which should obey or submit to Great Britain's maritime rules, whatever might be the character of its cargo—neutral or belligerent owned.

Opponents of the British Government of the day, such as Brougham and Erskine,⁸ did not hesitate to urge in Parliament the undeniable conflict between portions of the orders of November 11th and recognized principles of international law, since it was attempted to prevent Powers from carrying on traffic not only permitted to them in time of peace but which in no wise contravened the inhibitions of sea warfare in the matter of blockade, contraband or unneutral service; nor was it in line with any principle of the law of nations to compel the passage of neutral traffic, innocent in itself, through British ports as though it were colonial in character and hence undeniably under control of the parent state; and, lastly, the condemnation of a neutral vessel for carrying a document touching the cargo's actual origin was not in any sense permissible under international law. These considerations were embodied in a series of resolutions offered in Parliament by Erskine on March 8, 1808, and will be found in the Appendix hereto.⁹ The orders, nevertheless, were in part merged in a bill which passed and received the royal assent and thus became placed beyond attack on constitutional grounds.¹⁰

⁸ Cf. Alison, *History of Europe*, Chap. XLVII.

⁹ *Infra*, page 581.

¹⁰ "On the 21st of November, 1806, a decree was published at Berlin prohibiting the inhabitants of the entire European territory allied with France from carrying on any commerce with Great Britain, or admitting any merchandise whatever that had been produced in Great Britain or in its colonies. Spain, Italy and Holland were mentioned by name in the decree; Northern Germany was treated as French territory; so that the line of coast closed to the shipping and the produce of the British Empire included everything from the Vistula to the Southern point of Dalmatia, with the exception of Denmark and Portugal, and the Austrian port of Trieste. All property belonging to English subjects, all merchandise of British origin, whoever might be the owner, was ordered to be confiscated: no vessel that had even touched at a British port was permitted to enter a Continental harbour. The grounds of international right advanced by Napoleon in justification of this decree were not intended to be taken seriously: his fixed purpose was to exhaust Great Britain, since he could not destroy her navies, or, according to his own expression, to conquer England upon the

Meantime the American Congress had initiated the passage of a series of embargo, non-intercourse, and non-importation measures unfortunate alike in conception and application, and while primarily municipal in character, were destined to produce disastrous international effects. On April 17, 1808, Napoleon being then at Bayonne near the Spanish border, issued a notable decree announcing the confiscation of all American vessels reaching France on the avowed ground that such vessels must have transgressed the laws of their own country in leaving American ports and were thus amenable to seizure by way of assisting the United States in carrying out its own laws. Under this decree, many American ships were confiscated, as were many more under a subsequent decree issued in May, 1810, from the Palace of Rambouillet. The November orders were revoked by the British Government by order of April 26, 1809,¹¹ and only the coasts of France, Holland and Italy, together with the colonial possessions of the first two named countries, were now to be laid under the ban of a proclamation blockade, and hence colonial commerce of these Powers being excluded from the world's markets, British planters were correspondingly favored. The *entrepôt* feature of the earlier orders also was omitted, although the disingenuous license system was to be still allowed. The blockade was nevertheless intended to be unqualifiedly rigorous, and so continued in greater or lesser degree, until the War of 1812 with the United States and Napoleon's own fatal Russian expedition at the same period swept orders and decrees into the shadow of things forgotten.

Continent. All that was most harsh and unjust in the operation of the Berlin Decree fell, however, more upon Napoleon's own subjects than upon Great Britain. The exclusion of British ships from the harbours of the Allies of France was no more than the exercise of a common right in war; even the seizure of the property of Englishmen, though a violation of international law, bore at least an analogy to the seizure of French property at sea; but the confiscation of the merchandise of German and Dutch traders after it had lain for weeks in their own warehouses, solely because it had been produced in the British Empire, was an act of flagrant and odious oppression. The first result of the Berlin Decree was to fill the trading towns of North Germany with French revenue-officers and inquisitors. Peaceable tradesmen began to understand the import of the battle of Jena when French gendarmes threw their stock into the common furnace, or dragged them to prison for possessing a hogshead of Jamaica sugar or a bale of Leeds cloth. The merchants who possessed a large quantity of English or colonial wares were the first, as they were the heaviest, sufferers by Napoleon's commercial policy; the public at large found the markets supplied by American and Danish traders, until, at a later period, the British Government adopted reprisals, and prevented the ships of neutrals from entering any of the ports from which English vessels were excluded. Then every cottage felt the stress of war. But if the full consequences of the Berlin Decree were delayed until the retaliation of Great Britain had reached the dimensions of Napoleon's own tyranny, the Decree itself marked on the part of Napoleon the assumption of a power in conflict with the common needs and habits of European life. Like most of the schemes of Napoleon subsequent to the victories of 1806, it transgressed the limits of practical statesmanship, and displayed an ambition no longer raised above mere tyranny by its harmony with forms of progress and with better tendencies of the age." (*A History of Modern Europe*, by C. A. Fyffe, M. A., Vol. I, 1881, pp. 327 to 330, inc.)

¹¹ Text printed in Appendix, *infra*, p. 583.

The constitutional validity of the orders in council, which had been acutely challenged by Lord Erskine in 1808, came before the High Court of Admiralty in 1811 in the celebrated case of the American ship *Fox*, seized on its way from Boston to Cherbourg and sailing, consequently, in violation of British blockade prohibitions. In determining the vessel's condemnation Sir William Scott, afterwards Lord Stowell, rested upon the principle of retaliation, a proceeding, as he pointed out, not repugnant to principles of the law of nations. The learned judge appears to have thought also that the Crown in council possesses certain rights over the High Court of Admiralty somewhat similar to those acknowledged as within the power of Parliament where purely municipal law might be concerned, although he was careful to acknowledge that the court administers the jurisprudence of international law, a system of world application and necessarily universal in scope. In his view, however, of the relations of the Crown to the court, a position is taken which can scarcely be maintained and was fated then and later to encounter destructive criticism. Of it Brougham said, in a brilliant article which appeared a few months later in the *Edinburgh Review* of February, 1812, entitled "Disputes with America":

Here there are two propositions mentioned asserting two several duties which the Court has to perform. One of these is very clearly described; the duty of listening to Orders in Council, and proclamation issued by one of the parties before the Court;—the other, the duty of administering the Law of Nations, seems so little consistent with the former, that we naturally go back to the preceding passage of the judgment where a more particular mention is made of it. "This court" says the learned judge "is bound to administer the Law of Nations to the subjects of other countries, in the different relations in which they may be placed towards this country and its government. This is what other countries have a right to demand for their subjects, and to complain if they receive it not. This is its unwritten law evidenced in the course of its decisions, and collected from the common usage of civilized states."

How then can the Court be said to administer the unwritten law of nations between contending states, if it allows that one government, within whose territories it "locally has its seat" to make alterations on that law at any moment of time? And by what stretch of ingenuity can we reconcile the position, that the Court treats the English government and foreign claimants alike, determining the cause exactly as it would if sitting in the claimant's country, with the new position, that the English government possesses legislative powers over the Court, and that its orders are in the law of nations what statutes are in the body of municipal law? These are the questions which, we believe, the combined skill and address of the whole Doctors of either law may safely be defied to answer.

We shall here close our review of the leading maritime orders and decrees of the Napoleonic age by citing the text of the Milan decree, a measure unhesitatingly characterized by the Supreme Court of the United States in the case of *Williams v. Armroyd* (7 Cranch 423) as subversive of international law:—

DÉCRET IMPÉRIAL PORTANT SAISIE ET CONFISCATION DES BÂTIMENS QUI, APRÈS AVOIR TOUCHÉ EN ANGLETERRE ENTRERONT DANS LES PORTS DE FRANCE.¹²

AU PALAIS DE MILAN, le 17 decembre 1807.

Napoléon, empereur des français, roi d'Italie et protecteur de la Confédération du Rhin; Sur le rapport de notre ministre des finances, nous avons décrété et décrétons ce qui suit:

Art. 1er. Tous les bâtimens qui, après avoir touché en Angleterre, pas quelque motif que ce soit, entreront dans les ports de France, seront saisis et confisqués, ainsi que les cargaisons, sans exception ni distraction des denrées et marchandises.

2. Les capitaines des bâtimens qui entreront dans les ports de France devront dans le jour de leur arrivée, faire, au bureau des douanes impériales, une déclaration du lieu de leur départ, de ceux où ils ont relâché, et lui présenter leurs manifestes, connoissimens, papiers de mer et livres de bord.

Lorsque le capitaine aura signé et remis sa déclaration, et communiqué ses papiers le chef des douanes interrogera séparément les matelots, en présence des deux principaux préposés. S'il résulte de cet interrogatoire que le bâtiment a touché en Angleterre, indépendamment de la saisie et confiscation dudit bâtiment et de sa cargaison, le capitaine sera, ainsi que ceux des matelots qui, dans leur interrogatoire auraient fait une fausse déclaration, constitué prisonnier, et ne sera mis en liberté qu'après avoir payé une somme de six mille francs pour son amende personnelle et celle de cinq cents pour chacun des matelots arrêtés, sans préjudice des peines encourues par ceux qui falsifient leurs papiers de mer et livres de bord.

3. Si des avis et renseignemens donnés aux directeurs de nos douanes élèvent des soupçons sur l'origine des cargaisons, elles seront mises provisoirement en entrepôt, jusqu'à ce qu'il ait été reconnu et décidé qu'elles ne proviennent ni d'Angleterre ni de ses colonies.

4. Nos commissaires des relations commerciales qui délivreront des certificats d'origine pour les marchandises qui seront chargées dans les ports de leur résidence, à destination de ceux de France, ne se borneront pas à attester que les marchandises ou denrées ne viennent ni d'Angleterre ni de ses colonies et de son commerce; ils indigneront le lieu de l'origine, les pièces qui leur a été représentées à l'appui de la déclaration qui leur a été faite, et le nom du bâtiment à bord duquel elles ont été transportées primitivement du lieu de l'origine dans celui de leur résidence.

Ils adresseront un duplicata de leur certificat à notre conseiller d'état directeur général de nos douanes.

5. Nos ministres des relations extérieures, de la guerre et des finances, sont chargés, chacun en ce qui le concerne de l'exécution du présent décret."

Signé NAPOLÉON

Par l'Empereur:

Le ministre Secrétaire d'état, signé

HUGUES B. MARET

¹² *Bulletin des lois de l'empire français*, 4 série, tome 7, Paris, 1808, pp. 357-359.

The rules of sea warfare which had found so abundant illustration in contests over these orders and decrees were destined to arouse similar discussion and differences in the world conflict of a century later.

Scarcely, indeed, had hostilities broken out in the war of 1914 when it became evident that the character of the struggle would inevitably strain to the uttermost all recognized principles of maritime international law, while the extraordinarily rapid development in the manufacture of war munitions and the utilization of materials not hitherto employed for this purpose, proclaimed the disappearance of any hard and fast rule of definition touching what might or might not be specially adapted to contraband. For Great Britain the problems to be solved were evident enough. Its insular position rendered a supply of foodstuffs from oversea imperative, while at the same time it would be necessary to prevent supply to its enemies of such raw materials as might be essential in the manufacture of war munitions. Since such materials, together with needed provisions, must come from neutrals, and since these were interested to promote their own commercial advantage to the utmost within admitted legal limits, sharp differences at once arose touching the legal rights of these various parties, and the necessity was laid upon the British Government of holding an even course between neutral commercial claims sustainable under international law and its own needs and perils.

During the century which had elapsed since the struggle with Napoleon, international law had gained in clearness of definition, and somewhat in substance also, through judicial decisions in many prize cases and also through such important international agreements as the Declaration of Paris and the Hague conventions, while in 1909 the Declaration of London had attempted a further definition and clarification of many aspects of the subject. The Declaration of Paris remains as yet unratified by the United States, but the Declaration of London, although unratified by Great Britain, was deemed a sufficient basis of procedure with some modifications and this was accordingly announced by order in council issued August 20, 1914. But the rapidly changing aspects of the war rendered it increasingly plain that some other and radical modifications must be made, and later orders therefore reduced the declaration almost to the vanishing point as a code of sea warfare, until, on July 7, 1916, an order abandoned these various modifications and announced certain rules of action widely departing from the declaration, but claimed nevertheless to be in harmony with international law.

The declaration had proposed, while recognizing the right of every sovereign government to alter its contraband lists, on proper notification, a certain free list; there was also recognized for absolute contraband the principle of continuous voyage or true ultimate destination, although this was not to be allowed in the case of conditional contraband, the latter term being applied to merchandise destined for the naval or military supply of the

enemy instead of for the use of the civil hostile population. But the rapid utilization of certain raw materials found on the free list, and the practical identification of an enemy country's entire population with the conduct of war, compelled a departure from these aspects of the declaration. Furthermore, the peculiar geographical conditions surrounding German territory, combined with the introduction of the mine and the submarine on a scale hitherto unknown, made former conceptions of blockade difficult or impossible of practical application, thus compelling a reversion in some sort to a long-distance or cruiser blockade of North Sea coasts on principles not dissimilar from those announced in the Anglo-Russian treaty of 1801 and in the orders in council of 1807, while freedom of enemy goods carried on neutral ships as laid down in the Declaration of Paris was practically abandoned, the declaration being implicitly denounced. Thus a destination to neutral ports ceased to afford protection to neutral commerce, if probably bound ultimately to enemy territory, while the formerly more or less precisely defined blockade area (*rayon d'action*) became indefinitely expanded to correspond with possibilities of effective cruiser patrol, and, moreover, proofs of ultimate destination might now be inferred or conclusively established from facts and circumstances lying quite outside of information derived from papers upon a captured vessel as in the old and well established rule in such cases.

To much of all this the United States as a neutral government urged protests based upon British seizures of cargoes declared not to be absolute, but rather conditional, contraband, if contraband at all, and on its way, moreover, to neutral ports and thus not liable in any case to capture. The law of blockade and contraband were, it was said, applied indiscriminately and recklessly, while the British plan of bringing merchantmen into port for the alleged purpose of a thorough search went far in the delays thus caused beyond any practice heretofore recognized as admissible in the law of nations; for not only were enemy coasts practically placed under blockade, but a blockade of some sort certainly was now being attempted to be applied to coasts and ports wholly neutral, so that both the neutral exporter and importer, as well as the enemy, were alike objects of belligerent attack. This was said to be carried out in defiance of international law, nor was it necessary to point to such evidences of that law as contained in Articles 17, 18, and 19 in the Declaration of London to establish the points at issue beyond reasonable controversy. The United States likewise complained that its flag was wrongfully employed to avoid capture. British principles of visit and search came, therefore, under severe condemnation, as in Napoleon's Berlin decree, while the requirement by an order in council (February 16, 1917) that vessels carrying cargoes to or from countries contiguous to Germany should first call at a British port for examination seemed to be practically a revival of the *entrepôt* system so objectionable to neutrals as well as to Britain's enemies a century earlier. Likewise, as in the case of the *Fox* in

1811, the constitutional validity of certain orders and their relation to the law of nations became the subject of notable arguments in prize proceedings with the result that the entire subject received an exhaustive discussion and resulted in expositions of international law which would seem for the present age at least to be final.¹³

The principal orders in council coming within our view of the subject are those of August 20, 1914, March 11, 1915, March 30, 1916, July 7, 1916, January 10, 1917, and February 16, 1917. The order of March 11, 1915, prohibits commercial access to any German port and provides that vessels sailing from a German port must discharge their goods in a British or allied port and that "Every merchant vessel which sailed from a port other than a German port after the 1st of March, 1915, having on board goods which are of enemy origin or are enemy property may be required to discharge such goods in a British or allied port. Goods so discharged in a British port shall be placed in the custody of the marshal of the Prize Court, and, if not requisitioned for the use of His Majesty, shall be detained or sold under the direction of the Prize Court. The proceeds of goods so sold shall be paid into court and dealt with in such manner as the court may in the circumstances deem to be just."

The order of July 7, 1916 provides:—

a. The hostile destination required for the condemnation of contraband articles shall be presumed to exist, until the contrary is shown, if the goods are consigned to or for an enemy authority, or an agent of the enemy state, or to or for a person who, during the present hostilities, has forwarded contraband goods to an enemy authority, or an agent of the enemy state, or to or for a person in territory belonging to or occupied by the enemy, or if the goods are consigned "to order," or if the ship's papers do not show who is the real consignee of the goods.

b. The principle of continuous voyage or ultimate destination shall be applicable both in cases of contraband and of blockade.

c. A neutral vessel carrying contraband with papers indicating a neutral destination, which, notwithstanding the destination shown in the papers, proceeds to an enemy port, shall be liable to capture and condemnation if she is encountered before the end of her next voyage.

d. A vessel carrying contraband shall be liable to capture and condemnation if the contraband, reckoned either by value, weight, volume, or freight forms more than half the cargo.

¹³ Cf. "Correspondence between His Majesty's Government and the United States Government Respecting the Rights of Belligerents," collected in the 1st supplement, *Copies of Proclamations, Orders in Council and Documents relating to the European War*. (Ottawa, 1915). The orders in council of 1914-1917 are published in the volumes of British emergency legislation and are conveniently collected by the Canadian Dominion Government in the series above named, as well as published by the British Government in the series of Statutory Rules and Orders.

The correspondence and orders are printed, from official texts furnished by the Department of State of the United States, in the SPECIAL SUPPLEMENTS to this JOURNAL issued in July, 1915, October, 1916, and October, 1917.

And it is hereby further ordered as follows:

1. Nothing herein shall be deemed to affect the Order in Council of the 11th of March, 1915, for restricting further the commerce of the enemy or any of His Majesty's proclamations declaring articles to be contraband of war during the present hostilities.

The order of January 10, 1917, announces retaliation as the basic principle justifying the compulsory discharge "in a British or Allied port of goods which were of enemy origin or of enemy destination or which were enemy property irrespective of the enemy country from or to which such goods were going or of the enemy country in which was domiciled the person whose property they were"; and on the 16th of February following an order was issued briefly summarizing the chief new courses to be observed:

1. A vessel which is encountered at sea on her way to or from a port in any neutral country affording means of access to the enemy territory without calling at a port in British or Allied territory shall, until the contrary is established, be deemed to be carrying goods with an enemy destination, or of enemy origin, and shall be brought in for examination, and, if necessary, for adjudication before the Prize Court.

2. Any vessel carrying goods with an enemy destination, or of enemy origin, shall be liable to capture and condemnation in respect of the carriage of such goods; provided that, in the case of any vessel which calls at an appointed British or Allied port for the examination of her cargo, no sentence of condemnation shall be pronounced in respect only of the carriage of goods of enemy origin or destination, and no such presumption as is laid down in Article 1 shall arise.

3. Goods which are found on the examination of any vessel to be goods of enemy origin or of enemy destination shall be liable to condemnation.

4. Nothing in this order shall be deemed to affect the liability of any vessel or goods to capture or condemnation independently of this order.

The leading cases in exposition of the principles of maritime action announced in these orders are those of the *Zamora*, determined by the Privy Council April 7, 1916, and the *Leonora* and other vessels, decided in the Probate, Divorce and Admiralty Division, April 15, 1918.

The *Zamora*¹⁴ was a Swedish steamship, seized April 8, 1915, on its way from New York to Stockholm, with a cargo of 400 tons of copper. The vessel was taken by a British cruiser to Kirkwall to be searched, and on April 19th condemnation of the ship and cargo was claimed on the ground that the cargo was as to more than one-half contraband of war and that both were in any event confiscable under the reprisals order of March 11, 1915, the ship having sailed from a port other than a German port after March 1 carrying a cargo with enemy destination or which was enemy property. The court ordered the release of the copper and its delivery to the Crown under Order XXIX, rule I, of the Prize Court Rules of 1914 as amended by order in

¹⁴ Text of decision printed in this JOURNAL, April, 1916 (Vol. 10), p. 422.

council of April 29, 1915. In the opinion of the presiding judge, the order could be made under inherent powers of the Prize Court without infringing the law of nations as well as under the powers conferred by orders in council. But the Privy Council thought that order XXIX, rule I, "construed as an imperative direction to the court, was not binding; and that as the judge had no satisfactory evidence before him that the copper was urgently required, the order must be set aside." The determination of the Lords of Appeal rests upon the consideration that "the Crown has no power by order in council to prescribe or alter the law which prize courts have to administer;" hence an order is to be regarded as a rule of administrative action only and not as an announcement of law in a tribunal expounding the law of nations. Moreover "the dictum of Lord Stowell in the case of the *Fox* (Edwards' Reports, 312) to the effect that the King in council possesses the legislative rights over a Prize Court analogous to those possessed by Parliament over the courts of common law" cannot be maintained.

In the case at bar the right to requisition exists, but there must be an ascertained basis for judicial action before such a right becomes exercisable.

In the case of the *Leonora* the President of the Probate, Divorce and Admiralty Division, Sir Samuel Evans, held that "The Reprisals Order in Council of February 16th, 1917, which authorizes the capture and condemnation of vessels carrying cargoes to or from countries contiguous to Germany, if such vessels have not first called at a British or Allied port for examination, was, in the circumstances existing at the date of the Order, justified by the recognized principles of international law, and the consequential results to neutrals give them no right to complain or to claim compensation." This important decision comprises a valuable review of orders in council in their historical development¹⁵ and constitutes a permanent landmark in legal science.

Principles, indeed, do not and cannot change, but while in themselves permanent, their applications must be recognized as capable of indefinite expansion as new world needs arise and imperiously demand adjustment amid new conditions. It is in the spirit of such conditions and needs that the orders in council of both periods at which we have glanced must be studied, and if rightly grasped, cannot but aid every genuine effort to promote the unfolding and growth of the law of nations in both its substantive and procedural aspects.

¹⁵ The decision in the case of the *Leonora* was affirmed by the Judicial Committee of the Privy Council on July 31, 1919. See text in this JOURNAL for October, 1919 (Vol. 13, p. 814).

APPENDIX

(1) AT THE COURT OF THE QUEEN'S PALACE, *the 11th of November, 1807.*

Present, the King's most Excellent Majesty in council:

Whereas certain orders, establishing an unprecedented system of warfare against this kingdom, and aimed especially at the destruction of its commerce and resources, were, some time since, issued by the Government of France, by which "the British islands were declared to be in a state of blockade" thereby subjecting to capture and condemnation all vessels, with their cargoes, which should continue to trade with His Majesty's dominions:

And whereas, by the same order "all trading in English merchandise is prohibited, and every article of merchandise belonging to England, or coming from her colonies, or of her manufacture, is declared lawful prize."

And whereas the nations in alliance with France, and under her control, were required to give, and have given, and do give, effect to such orders:

And whereas His Majesty's order of the 7th of January last has not answered the desired purpose, either of compelling the enemy to recall those orders, or of inducing neutral nations to interpose, with effect, to obtain their revocation, but, on the contrary, the same have been recently enforced with increased rigor:

And whereas His Majesty, under these circumstances finds himself compelled to take further measures for asserting and vindicating his just rights, and for supporting that maritime power which the exertions and valor of his people have, under the blessing of Providence, enabled him to establish and maintain; and that the maintenance of which is not more essential to the safety and prosperity of His Majesty's dominions, than it is to the protection of such states as still retain their independence, and to the general intercourse and happiness of mankind:

His Majesty is therefore pleased, by and with the advice of his privy council, to order, and it is hereby ordered, that all the ports and places of France and her allies, or of any other country at war with His Majesty, and all other ports or places in Europe, from which, although not at war with His Majesty, the British flag is excluded, and all ports or places in the colonies belonging to His Majesty's enemies, shall from henceforth, be subject to the same restrictions in point of trade and navigation, with the exceptions hereinafter mentioned, as if the same were actually blockaded by His Majesty's naval forces, in the most strict and rigorous manner. And it is hereby further ordered and declared, that all trade in articles which are of the produce or manufacture of the said countries or colonies, shall be deemed and considered to be unlawful; and that every vessel trading from or to the said countries or colonies, together with all goods and merchandise on board, and all articles of the produce or manufacture of the said countries or colonies, shall be captured and condemned as prize to the captors.

But although His Majesty would be fully justified, by the circumstances

and considerations above recited, in establishing such system of restrictions with respect to all the countries and colonies of his enemies, without exception or qualification, yet His Majesty being, nevertheless, desirous not to subject neutrals to any greater inconvenience than is absolutely inseparable from the carrying into effect His Majesty's just determination to counteract the designs of his enemies, and to retort upon his enemies themselves the consequences of their own violence and injustice; and being yet willing to hope that it may be possible (consistently with that object) still to allow neutrals the opportunity of furnishing themselves with colonial produce for their own consumption and supply, and even to leave open, for the present, such trade with His Majesty's enemies as shall be carried on directly with the ports of His Majesty's dominions, or of his allies, in the manner hereinafter mentioned:

His Majesty is, therefore, pleased further to order, and it is hereby ordered, that nothing herein contained shall extend to subject to capture or condemnation any vessel, or the cargo of any vessel, belonging to any country not declared by this order to be subjected to the restrictions incident to a state of blockade, which shall have cleared out with such cargo from one port or place of the country to which she belongs, either in Europe or America, or from some free port in His Majesty's colonies, under circumstances in which such trade, from such free ports, is permitted, direct to some port or place in the colonies of His Majesty's enemies, or from those colonies direct to the country to which such vessel belongs, or to some free port in His Majesty's colonies, in such cases, and such articles, as it may be lawful to import into such free port; nor to any vessel, or the cargo of any vessel, belonging to any country not at war with His Majesty, which shall have cleared out under such regulations as His Majesty may think fit to prescribe, and shall be proceeding direct from some port or place in this kingdom, or from Gibraltar, or Malta, or from any port belonging to His Majesty's allies, to the port specified in her clearance; nor to any vessel, or the cargo of any vessel, belonging to any country not at war with His Majesty, which shall be coming from any port or place in Europe which is declared by this order to be subject to the restrictions incident to a state of blockade, destined to some port or place in Europe belonging to His Majesty, and which shall be on her voyage direct thereto; but these instructions are not to be understood as exempting from capture or confiscation any vessel or goods which shall be liable thereto in respect of having entered or departed from any port or place actually blockaded by His Majesty's squadrons or ships of war, or for being enemy's property, or for any other cause than the contravention of this present order.

And the commanders of His Majesty's ships of war and privateers, and other vessels acting under His Majesty's commission, shall be, and are hereby, instructed to warn every vessel which shall have commenced her voyage prior to any notice of this order, and shall be destined to any port of

France, or of her allies, or of any other country at war with His Majesty, or to any port or place from which the British flag, as aforesaid, is excluded, or to any colony belonging to His Majesty's enemies, and which shall not have cleared out as is hereinbefore allowed, to discontinue her voyage, and to proceed to some port or place in this kingdom, or to Gibraltar or Malta; and any vessel which, after having been so warned, or after a reasonable time shall have been afforded for the arrival of information of this His Majesty's order at any port or place which she sailed, or which, after having notice of this order, shall be found in the prosecution of any voyage contrary to the restrictions contained in this order, shall be captured, and, together with her cargo, condemned as lawful prize to the captors.

And whereas countries not engaged in the war have acquiesced in these orders of France, prohibiting all trade in any articles the produce or manufacture of His Majesty's dominions; and the merchants of those countries have given countenance and effect to those prohibitions by accepting from persons, styling themselves commercial agents of the enemy, resident at neutral ports, certain documents, termed "certificates of origin", being certificates obtained at the ports of shipment, declaring that the articles of the cargo are not of the produce or manufacture of His Majesty's dominions, or to that effect:

And whereas this expedient has been directed by France, and submitted to by such merchants, as part of the new system of warfare directed against the trade of this kingdom, and as the most effectual instrument of accomplishing the same, and it is therefore essentially necessary to resist it:

His Majesty is therefore pleased, by and with the advice of his privy council, to order, and it is hereby ordered, that if any vessel, after reasonable time shall have been afforded for receiving notice of this His Majesty's order, at the port or place from which such vessel shall have cleared out, shall be found carrying any such certificate or document as aforesaid, or any document referring to or authenticating the same, such vessel shall be adjudged lawful prize to the captor, together with the goods laden therein, belonging to the person or persons by whom, or on whose behalf, any such document was put on board.

(2) RESOLUTIONS OF LORD ERSKINE IN PARLIAMENT, *March 8, 1808.*

1st, That the power of making laws to bind the people of this realm, is exclusively vested in his majesty by and with the advice and consent of the lords spiritual and temporal, and commons of the realm, in parliament assembled: and that every attempt to make, alter, suspend, or repeal such laws, by order of his majesty in his privy council, or in any other manner than by his majesty in parliament, is unconstitutional and illegal.—2nd, That the advising his majesty to issue any Order in Council, for dispensing with, or suspending any of the laws of this realm, is a high violation of the fundamental laws and constitution thereof. That the same cannot in any case be

justified, but by some unforeseen and urgent necessity endangering the public safety. And that in every such case it is the duty of his majesty's ministers to advise his majesty, after issuing such order, forthwith to assemble his parliament, in order both that the necessity of such proceeding may be inquired of and determined; and that due provision may be made for the public safety, by the authority of his majesty in parliament.—3d, That the Law of Nations is a part of the law of the land, and that neutral nations, not interposing in the war between his majesty and his enemies, have a legal right to such freedom of commerce and navigation, as is secured to them by the Law of Nations.—4th, That the late Orders of his majesty in Council, are contrary to the law of nations, inasmuch as they purport to interrupt the commerce of friendly and unoffending nations, carrying on their accustomed trade in innocent articles, between their own country and the ports of his majesty's enemies, not actually blockaded; and even between their own country and those of his majesty's allies. And also, inasmuch as they purport to compel such trade in future, to come, in the first instance, under pain of confiscation, to the ports of his majesty's dominions, or of his allies, and there to submit to such regulations, restrictions and duties as shall be imposed upon them.—5th, That by the Law of Nations, all independent governments have an undoubted right, both in war and peace, to regulate in their own territories, and according to their own convenience, except where specially restrained by treaty, the admission or exclusion of the ships or merchandize of other states. That by the municipal law of this and other European countries, it hath been usual to require, that vessels trading to or from the ports thereof, shall carry such certificates or other documents, showing in what country the vessel hath been built, fitted or owned, by what sailors she is navigated, and in what country the articles composing the cargo have been grown, produced or manufactured, as may be judged necessary to entitle them to entry. And, that the ships of friendly nations carrying such papers in time of war, do not thereby violate any rule of amity with other countries, or legally incur any penalty whatever, unless such should be found to be fraudulent.—6th, That so much of his majesty's Order in Council, of the 11th of Nov. last, as directs, that 'any vessels carrying any certificates or documents, declaring, that the articles of the cargo are not of the produce or manufacture of his majesty's dominions, or to that effect, or carrying any other document referring to such certificate or document, shall, together with the goods laden therein, belonging to the persons by whom, or on whose behalf, any such document was put on board, be adjudged lawful prize to the captor'; is a gross and flagrant violation of the Law of Nations, of the statutes made for the freedom of navigation and commerce, and of the rights and liberties of the people of this realm; inasmuch as it purports to expose the property both of foreign merchants, and even of his majesty's subjects, in the ports of this realm, as well as on the high seas, to unjust detention and forfeiture in cases where no offence whatever hath been committed against any known principle, or rule of the Law of Nations, or against any law, statute, or

usage of the realm.—7th, That the free access to the ports of this realm, and the liberty of trading to and from the same, has been secured to merchant strangers, not being of a hostile nation, by Magna Charta and divers other ancient statutes in which it is expressly provided, 'that no manner of ship, which is fraught towards England or elsewhere, be compelled to come to any port of England, nor there to abide against, the will of the masters and mariners of the same, or of the merchants whose the goods be.' And that the said statutes were intended, not only to protect the innocent commerce of friendly nations, but also to secure to the people of this realm, the benefits of a free and open market for the sale of the produce and manufactures thereof; and for the carrying on of such trade as might conduce to the profit and advantage of the realm.—8th, That the above-mentioned Orders of his majesty in Council are in open breach and violation of the said statutes, inasmuch as they direct that ships fraught to other places than this kingdom, and even to ports belonging to his majesty's allies, may be compelled to come to the ports of this realm, or of its dependencies, and there to abide under such restrictions or regulations as his majesty may be advised to impose upon them; and also inasmuch as they direct that the goods laden in such vessels shall not be cleared out again from such ports, without having been, in some cases, previously entered and landed; nor, in other cases, without having obtained from his majesty's officers licences to depart, which licences such Officers are not, by any known law of this realm, authorized to grant." (Hansard's *Debates*, Vol. X, columns 969-971.)

(3) AT THE COURT OF THE QUEEN'S PALACE, *the 26th of April, 1809.*

Present, the King's Most Excellent Majesty in council.

Whereas, His Majesty, by his order in council of the 11th of November, 1807, was pleased, for the reasons assigned therein, to order that "all the ports and places of France and her allies, or any other country at war with His Majesty, and all other ports or places in Europe from which, although not at war with His Majesty, the British flag is excluded, and all ports or places in the colonies belonging to His Majesty's enemies, should from henceforth be subject to the same restrictions in point of trade and navigation as if the same were actually blockaded in the most strict and rigorous manner," and also to prohibit "all trade in articles which are the produce or manufactures of the said countries or colonies," and whereas, His Majesty, having been nevertheless desirous not to subject those countries which were in alliance or in amity with His Majesty to any greater inconvenience than was absolutely inseparable from carrying into effect His Majesty's just determination to counteract the designs of his enemies, did make certain exceptions and modifications expressed in the said order of the 11th of November, and in certain subsequent orders of the 25th of November, declaratory of the aforesaid order of the 11th of November and of the 18th of December, 1807, and the 30th of March, 1808:

And, whereas, in consequence of divers events which have taken place since the date of the first-mentioned order, affecting the relations between Great Britain and the territories of other Powers, it is expedient that sundry parts and provisions of the said orders should be altered or revoked:

His Majesty is therefore pleased, by and with the advice of his Privy Council, to revoke and annul the said several orders, except as hereinafter expressed; and so much of the said several orders, except as aforesaid, is hereby revoked accordingly. And His Majesty is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, that all the ports and places as far north as the river Ems, inclusively, under the Government styling itself the Kingdom of Holland, and all ports and places under the Government of France, together with the colonies, plantations, and settlements in possession of those Governments, respectively, and all ports and places in the northern parts of Italy, to be reckoned from the ports of Orbello and Pesaro, inclusively, shall continue, and be subject to the same restrictions, in point of trade and navigation, without any exception, as if the same were actually blockaded by His Majesty's naval forces in the most strict and rigorous manner; and that every vessel trading from and to the said countries or colonies, plantations or settlements, together with all goods and merchandize on board, shall be condemned as prize to the captors.

And His Majesty is further pleased to order, and it is hereby ordered, that this order shall have effect from the day of the date thereof with respect to any ship, together with its cargo, which may be captured subsequent to such day, on any voyage which is and shall be rendered legal by this order, although such voyage, at the time of the commencement of the same, was unlawful, and prohibited under the said former orders; and such ships, upon being brought in, shall be released accordingly; and with respect to all ships, together with their cargoes, which may be captured in any voyage which was permitted under the exceptions of the orders above mentioned, but which is not permitted according to the provisions of this order, His Majesty is pleased to order, and it is hereby ordered, that such ships and their cargoes shall not be liable to condemnation, unless they shall have received actual notice of the present order before such capture, or, in default of such notice until after the expiration of the like intervals, from the date of this order, as were allowed for constructive notice in the orders of the 25th of November, 1807, and the 18th of May, 1808, at the several places and latitudes therein specified.

And the right honorable the Lords Commissioners of His Majesty's Treasury, His Majesty's principal Secretaries of State, the Lords Commissioners of the Admiralty, and the Judge of the High Court of Admiralty, and Judges of the Courts of the Vice-Admiralty, are to give the necessary directions herein as to them may respectively appertain.

STEPHEN COTTRELL.

JURISDICTION OVER FOREIGNERS IN SIAM

BY ELDON R. JAMES

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The course of the development and modification of extritoriality in Siam is so little known that an account of it may not be without interest to students of international law. Extritoriality, which affects only a minority of the foreigners resident in Siam, for the majority have never enjoyed its privileges, began less than three generations ago when Siam's legal institutions were still of a primitive sort and it seemed, therefore, to be a logical and simple expedient upon which to base trade relations with Europeans. Since then these institutions have been very considerably modified and extritoriality, regarded in Siam as a temporary device to last only until the law and the courts could be placed upon a modern footing, has become increasingly burdensome now that the number of foreigners, originally European but now preponderatingly Asiatic, affected by it has grown to considerable proportions, and the administration of justice has been improved and modernized.

The reorganization of courts and law, which has taken place since 1855, and especially since the reorganization of the Ministry of Justice in 1892, accompanied, as it has been, by advances in general administrative efficiency, has resulted in many instances in a progressive amelioration of the régime of extritoriality. In the course of this process, there have been introduced some novel restrictions upon the action of Siamese courts in their dealings with foreigners and these restrictions and guarantees are not without interest. However, notwithstanding their utility as temporary measures during a period of transition from the old system of justice to the new, many of these guarantees must be regarded as in their turn fast becoming obsolete and doomed to pass with extritoriality itself and to become matters of historical interest only.

With the promulgation and coming into force of the new codes, the completion of which is not far distant, and with an increasing efficiency in the administration of justice, there will be less and less reason, as the years go by, for insistence upon special procedure in judicial matters involving privileged groups of foreigners which is not insisted upon in other states. The state of the law and of the administration of justice is a matter about which foreigners in all countries are extremely sensitive, but if the progress already made is kept up in the future, Siam may not unreasonably expect to receive at no distant day the consideration in such matters due to a fully free and independent member of international society.

A review of the system of jurisdiction over special groups of foreigners in Siam, if, indeed, the medley of arrangements can be called a system, falls quite naturally into three periods, and for this and other reasons it has seemed more satisfactory to consider the treaties in chronological order rather than to attempt to group them according to topics or by countries. The first of these periods ended with the signing of the British treaty of 1855. The second began in 1855 and ended in 1874 when the treaty with the Government of India was executed, a period of the establishment of consular jurisdiction. The third period, one of the modification of consular jurisdiction, is not yet finished but began in 1874 when the first changes in the régime of exterritoriality were made.¹

PRIOR TO 1855

The student of the early Siamese treaties is very much handicapped by the fact that the records of the kingdom were destroyed when Ayuthia, then the capital, was taken and destroyed by the Burmese in 1767. Such records as exist of the international relations of the country before that time can now be found only in the archives of European states and these have not yet been thoroughly searched. Therefore, a study of the documents prior to 1767 must necessarily be incomplete. However, from materials recovered in Europe, together with the somewhat meager descriptions of the system which then prevailed, which are to be found in such contemporary writings as have been printed, some idea can be gathered of the system of jurisdiction over foreigners in the sixteenth, seventeenth, and eighteenth centuries.²

The Portuguese, the first Europeans to come in any considerable number, arrived early in the sixteenth century. They were followed, after a long interval, by the Dutch, and in the early part of the seventeenth century came the English, and about 1662, the French. Danish traders appeared in Tenasserim, then a part of Siam, in 1621, but apparently their stay was short. There were, also, during the seventeenth century, considerable groups of Asiatic peoples, Armenians, Persians, Indians, Malays and others. As a result of the religious persecutions in Japan, a large number of Japanese

¹ A collection of *State Papers of the Kingdom of Siam, 1664-1886*, compiled by the Siamese Legation in Paris, was published in London in 1886. Since then no other official collection has appeared, though one is now in course of preparation. A collection, unofficial and incomplete, was published in Bangkok in 1915 by the *Bangkok Times*, an English newspaper. Wolcott H. Pitkin, Esq., of the New York bar, formerly Adviser in Foreign Affairs to the Siamese Government, has prepared and printed a very useful but unfortunately incomplete collection of treaties as a supplement to his brief, *Siam's Case for the Revision of Obsolete Treaty Obligations*.

² Many of the references to jurisdiction in the early accounts of Siam have been collected by M. Louis Duplatre, Assistant Legal Adviser in the Siamese Ministry of Justice, in his thesis for the University of Grenoble, *Condition des Étrangers au Siam*. Anderson's *English Intercourse with Siam in the Seventeenth Century* is a very useful book. See, also, *Records of the Relations between Siam and Foreign Countries in the 17th Century*, published by the Bajirafiana National Library, Bangkok.

Christians settled in the country about the middle of the seventeenth century. Of course, there were always the Chinese.

No treaties or conventions with the Portuguese during the period under consideration have yet been found, but doubtless there were such and a thorough search of the archives in Portugal and Macao might disclose many documents of interest.

There was in existence in the seventeenth century, a system, which undoubtedly antedated that century, but whether founded originally upon treaty stipulations is now unknown, under which the various national groups were permitted to live in "camps", over each of which was placed a "captain" chosen by his own people with the approval of the king. This captain was the judge in all differences among his nationals but was responsible for all his actions to a Siamese official designated for that purpose. The captain, or as he was sometimes called, the "amphur", which is the title of a subordinate Siamese administrative official at the present time, seems to have been subject in all respects to Siamese jurisdiction, and, indeed, although a foreigner, was regarded as a Siamese functionary, having no official relation to the government to his own country.

The earliest treaty³ containing references to jurisdiction, of which the writer knows, is that with the Dutch United East India Company, acting under the authority of the States-General of the United Netherlands. This treaty, which was signed at Ayuthia on August 22, 1664, after granting to the company certain trading monopolies, provided that, should any of the company's servants commit a grave crime in Siam, neither the king nor the Siamese courts should judge him but he must be delivered to the company's chief to be punished according to Dutch law. If the chief himself committed a capital crime, he was to be kept under arrest by the king until notice had been given to the governor-general. Dutch traders were thus made exempt from Siamese jurisdiction in cases of grave crimes committed by them and this exemption extended even to crimes against the Siamese themselves.

In 1662, a company of French missionaries came to Siam and was received with great cordiality, for the kings of Siam have been without exception extremely tolerant in religious matters. Misconstruing this friendliness, the missionaries persuaded themselves that the king's conversion to Christianity was a possibility and, upon their return to France, they succeeded in interesting Louis XIV in the project of establishing, at one stroke, both the Christian religion and French influence where neither had before existed. Ambassadors from Siam were, also, received by Louis and their reports to the king of Siam assisted greatly in aiding the French attempt. An embassy, headed by M. de Chaumont, was ultimately dispatched to Siam and on December 10, 1685, a treaty⁴ was signed at Lopburi which dealt ex-

³ *Siamese State Papers*, p. 233; also, *Records of Relations between Siam and Foreign Countries in the 17th Century*, Vol. 2, p. 66.

⁴ *Siamese State Papers*, p. 239.

clusively with matters of religion. The next day, December 11, 1685, another treaty, unpublished as yet, this time a commercial one, was executed by the Siamese and French plenipotentiaries.

The first treaty granted the missionaries the privilege of preaching the Christian law in Siam and guaranteed tolerance for such converts as might be made. The French request that, in order to avoid any attempts at the persecution of converts, a qualified Siamese "mandarin" might be appointed to hear and judge all such cases, was granted but with the qualification that the mandarin must refer such matters to one of the judges of the king before passing sentence. It was, also, agreed that if the missionaries did not transgress the privileges conferred upon them by the treaty, their affairs should be judged by a mandarin presented by the bishop but appointed by the king.

The second treaty of M. de Chaumont contains a request that the French servants of the *Compagnie des Indes Orientales*, as well as the French not connected with that company, who were not in the service of the king, might be judged as to disputes among themselves by the captain of the company, who was, also, to have authority to punish any of the French guilty of theft. The king, responding to this request, granted that the French, not in his service or in that of his ministers, who committed theft or any other culpable act, should be left for punishment to the French captain. If any one of the parties should not be satisfied with the judgment of the captain and should request that justice should be done by the king's ministers, the execution of the judgment should be stayed until the king of France had been informed and had given directions. If any of the servants of the company should commit any act worthy of judicial consideration, whether civil or criminal, against any one not French, the French captain was to sit with the Siamese judges to determine the case according to the laws of Siam. The king expressed the belief, however, that it would be better if a French judge should be appointed as this would relieve the officers of the company of a burden which might interfere with their commercial duties.

The provisions of this treaty were not completely satisfactory to France, and in 1687 another embassy, headed by MM. de la Loubère and Ceberet, was sent to Siam. This mission negotiated another treaty,⁵ which was signed at Lopburi on December 11, 1687. In this, the principal officer of the company was given full jurisdiction in all disputes, both civil and criminal, in which only individuals in the company's service were involved, whether French or of any other nationality. If one of the parties was not in the service of the company, the jurisdiction remained in the king of Siam, but the principal officer of the company was to have the right to sit in the court and to have a definite voice in the determination of the case, after taking an oath to judge according to right and justice.

⁵ *Journal of the Siam Society*, Vol. 14, part 2, pp. 23, 30.

The Siamese plenipotentiary in the treaties negotiated by M. de Chaumont was the famous Constantine Phaulcon, a Greek, who had been brought to Siam in an English ship, probably as a cabin boy, and had risen, after several unsuccessful adventures on his own account, in one of which he was shipwrecked, to the high position of favorite and chief minister of the king. Not without some reason, he came to be suspected of secret dealings with the French and, shortly after the treaty of 1687, the Siamese nobles, alarmed by the presence of French troops in the country, rose in revolt. Phaulcon was killed and, the king opportunely dying, the dynasty was changed and the French efforts came to nothing.

During most of the eighteenth century, Siam was occupied with civil war and with invasions by the Burmese. In 1757, the Burmese took the province of Tenasserim and ten years later Ayuthia fell. The capital was transferred to Bangkok and the first king of the present dynasty, the Chakri, was called to the throne in 1782. The new king, officially known today as Rama I, building upon the work of his immediate predecessor, who had not founded a dynasty, restored the country to a condition of peace, and relations with the European world, largely, if not entirely, suspended during most of the previous century, were resumed early in the nineteenth.

Perhaps in 1820, certainly about that time, the Portuguese sent an envoy who may have made a treaty. If he did, the text has been lost. However, he obtained permission to trade and consent was given for the establishment of a consulate, the first in Siam. The success of the experiment must have been doubtful for no other consulates were established until 1855, under the terms of the British treaty of that year.

About the same time, the British were trying to secure a commercial treaty. An attempt in 1822 failed, but in 1826, on June 20, a treaty,⁶ the first with Great Britain of which there is certain knowledge, was signed. No provision was made for a consul and the treaty provided that English and Siamese when in the country of the other must conduct themselves according to the established laws of that country, Siam or England, in every particular.

Shortly afterwards, on March 20, 1833, a treaty⁷ with the United States was signed at Bangkok, which provided that: "Merchants of the United States trading in the Kingdom of Siam shall respect and follow the laws and customs of the country in all points."

This was the last treaty, so far as is known, entered into by Siam prior to the establishment of consular jurisdiction in 1855. While the treaties of the seventeenth century undoubtedly contained the germs of an extritorial system, they had long since become obsolete and inoperative and it is not, therefore, too much to say that in 1855 extritoriality was unknown in Siam.

⁶ *British and Foreign State Papers*, Vol. 23, p. 1153.

⁷ *Ibid.*, Vol. 20, p. 590. There had been American ships engaged in trade with Siam since 1818.

1855-1874

On April 18, 1855, there was signed at Bangkok a new treaty⁸ with Great Britain, the effect of which was to establish a radically different system of jurisdiction. This treaty, generally known as the Bowring treaty, after the British envoy, Sir John Bowring,⁹ at that time the governor of Hong-kong, provided that:

II. The interests of all British subjects coming to Siam shall be placed under the regulation and control of a consul, who will be appointed to reside at Bangkok. . . . Any dispute arising between Siamese and British subjects shall be heard and determined by the consul, in conjunction with the proper Siamese officers; and criminal offences will be punished, in the case of English offenders, by the consul, according to English laws, and in the case of Siamese offenders, by their own laws through the Siamese authorities. But the consul shall not interfere in any matters referring solely to Siamese, neither will the Siamese authorities interfere in questions which concern only the subjects of Her Britannic Majesty.

On May 13, 1856, an agreement¹⁰ supplementary to the treaty of 1855 was executed in which were made certain explanations and amplifications of the provisions of that treaty. By Article II of this agreement, it was established:

That all criminal cases in which both parties are British subjects, or in which the defendant is a British subject, shall be tried and determined by the British Consul alone. . . .

That all civil cases in which both parties are British subjects, or in which the defendant is a British subject, shall be heard and determined by the British Consul alone. . . .

That whenever a British subject has to complain against a Siamese he must make his complaint through the British Consul, who will lay it before the proper Siamese authorities.

That in all cases in which British or Siamese subjects are interested, the Siamese authorities in the one case, and the British Consul in the other, shall be at liberty to attend at, and listen to, the investigation of the case; and copies of the proceedings will be furnished from time to time, or when ever desired, to the Consul or the Siamese authorities, until the case is concluded.

That although the Siamese may interfere so far with British subjects as to call upon the Consul . . . to punish grave offences when committed by British subjects, it is agreed that, British subjects, their persons, houses, premises, lands, ships, or property of any kind, shall not be seized, injured or in any way interfered with by the Siamese. . . .

It was, also, agreed in Article III, that in case a British subject died in Siam, his property was to go to his heirs according to English law and the

⁸ *British and Foreign State Papers*, Vol. 46, p. 138.

⁹ An account of his mission to Siam is given by Sir John Bowring in his *The Kingdom and People of Siam*.

¹⁰ *British and Foreign State Papers*, Vol. 46, p. 146.

consul or his appointee might take charge of it on their account. Any debts due the deceased might be collected by the consul and if the deceased should owe money such claims were to be liquidated as far as the estate of the deceased sufficed.

The Bowring treaty and the supplementary agreement furnished the model for all treaties negotiated up to 1874. While there are variations in language, there is little, if any, difference in effect. Beginning with the United States,¹¹ there followed at short intervals, treaties with France,¹² Denmark,¹³ the Hanseatic Republic,¹⁴ Portugal,¹⁵ The Netherlands,¹⁶ Prussia and the States of the German Customs and Commercial Union and the Grand Duchies of Mecklenburg-Schwerin and Mecklenburg-Strelitz,¹⁷ Sweden and Norway,¹⁸ Belgium,¹⁹ Italy,²⁰ Austria-Hungary,²¹ and Spain.²²

Since the treaty with Spain, no other treaties of the Bowring type have been concluded by Siam, though extritoriality was later conceded to Russia and Japan but under terms differing from those contained in the Bowring treaty. From the great number of treaties of this type and the consequent development of consular jurisdiction within so short a space of time, it might not unnaturally have been thought that its shaking off or even its material modification would be extremely difficult and long delayed. However, the growing numbers of British Indian and Burmese subjects in the north of Siam, where a British consul was available only after a long and difficult journey to Bangkok, five hundred or more miles to the south, soon made some special arrangement for such persons necessary. The process of modifying the system established by the Bowring treaty began, therefore, much earlier than might otherwise have been expected.²³

¹¹ May 29, 1856. *British and Foreign State Papers*, Vol. 46, p. 383.

¹² August 15, 1856. *Ibid.*, Vol. 47, p. 993.

¹³ May 21, 1858. *Ibid.*, Vol. 50, p. 1073.

¹⁴ October 25, 1858. Unpublished but practically identical with the treaty with The Netherlands, *infra*, n. 16.

¹⁵ February 10, 1859. *British and Foreign State Papers*, Vol. 72, p. 109.

¹⁶ December 17, 1860. *Ibid.*, Vol. 58, p. 262.

¹⁷ February 7, 1862. *Ibid.*, Vol. 53, p. 741.

¹⁸ May 18, 1868. *Ibid.*, Vol. 69, p. 1135.

¹⁹ August 29, 1868. *Ibid.*, Vol. 59, p. 405.

²⁰ October 3, 1868. *Ibid.*, Vol. 60, pp. 773, 783.

²¹ May 17, 1869. *Ibid.*, Vol. 61, p. 1308.

²² February 23, 1870. *Ibid.*, Vol. 61, p. 483.

²³ The treaty between France and Siam, signed at Paris, July 15, 1867, *British and Foreign State Papers*, Vol. 47, p. 1340, in which Siam recognized the recently acquired French protectorate over Cambodia, contains, Article V, a provision that "if Cambodian subjects commit any crime or offence on Siamese territory, they shall . . . be tried and punished with justice by the Siamese Government according to the laws of Siam". This, however, can hardly be taken as the beginning of the modification of extritoriality, as Siam had not theretofore recognized the protectorate, and Cambodians in Siam had been always subject to the jurisdiction of the Siamese law and tribunals.

1874 TO THE PRESENT TIME

On January 14, 1874, four years after the last treaty of the Bowring type had been entered into, there was signed at Calcutta a treaty²⁴ between Siam and the Government of India which provided for a special régime for British Indian and Burmese subjects in the three northern provinces of Chiengmai, Lakhon, and Lampoonchi. As the treaty had for one of its purposes the prevention and punishment of crime committed along the borders, chiefly dacoity, provision was made for the establishment of guard stations on Siamese territory and for a mutual surrender of fugitives. If dacoity was committed in the three Siamese provinces and the perpetrators fled into British territory, the British authorities were to use their best endeavors to apprehend them and, if Siamese, they were to be delivered to the Siamese authorities. If British, they were to be dealt with by the British authorities. A corresponding arrangement was made in cases of dacoity in British territory if the dacoits fled into Siam. However, if any persons were apprehended in the territory in which the dacoity had been committed, they were to be tried and punished by the local courts without question as to their nationality. Passports were required for Siamese going into British territory and for British subjects going into Siam from British Burma. Native Indian British subjects entering the three Siamese provinces without passports were liable to the local courts and the local law for offences committed by them on Siamese territory, but if provided with passports, they were to be dealt with according to English law by the consul at Bangkok, or by the British officer in the Yoonzaleen district in Burma, who was authorized, subject to the conditions of the treaty, to exercise all or any of the powers of a British consul under the treaty of 1855 and the supplementary agreement of 1856.

The arrangements made for the disposition of civil disputes are historically important for in them is found the germ of those international courts which figure so largely in the later British treaties of 1883 and 1909 and in the French treaty of 1907. The king of Siam agreed to appoint proper persons to be judges in the city of Chiengmai with jurisdiction to investigate and decide claims arising between British and Siamese in the three provinces above named; but in the case of claims by Siamese against British subjects holding passports, the judges were to have jurisdiction only in case such British subjects consented. Claims of Siamese against British subjects not consenting to the jurisdiction of the judges were to be investigated and decided either by the consul at Bangkok or the officer in the Yoonzaleen district in Burma. All claims by Siamese against British subjects not holding passports were to be decided by the ordinary local courts.

These limited and somewhat unsatisfactory arrangements continued for only a few years. On September 3, 1883, the treaty of 1874 was abrogated

²⁴ *British and Foreign State Papers*, Vol. 86, p. 537.

by a new treaty ²⁵ with the British Government, which provided for a British consulate at Chiangmai and brought into existence a new system of jurisdiction for all British subjects resorting to Chiangmai, Lakhon, and Lam-poonchi.

Many of the provisions of the treaty of 1874 were retained, but the jurisdiction of the court established by that treaty was extended so that all British subjects in the provinces named, in both civil and criminal matters and without distinction as to race and place of origin or the possession of passports, were placed under the jurisdiction of a special Siamese court, in the later treaties called the International Court, in which Siamese law was to be applied. The sections of the treaty in which these arrangements are set out are reproduced in the footnote below. ²⁶

By this treaty, which was to continue in force for seven years from the exchange of ratifications and from year to year thereafter, all British subjects in the specified provinces were placed under the jurisdiction of a Siamese court, administering Siamese law. The participation of the consul or vice-consul in the proceedings, the privilege of evoking any case in which both parties or the defendant or accused were British subjects, together with the provisions for appeal to Bangkok, furnish guarantees of fairness on the part of the Siamese tribunal, which, if applied in the proper spirit by the consul, would not be likely to give offence to the natural pride of the

²⁵ *British and Foreign State Papers*, Vol. 74, p. 78.

²⁶ VIII. His Majesty the King of Siam will appoint a proper person or persons to be a commissioner and judge, and commissioners and judges, in Chiangmai for the purposes hereinafter mentioned. Such judge or judges shall, subject to the limitations and provisions contained in the present treaty, exercise civil and criminal jurisdiction in all cases arising in Chiangmai, Lakon and Lam-poonchi, between British subjects, or in which British subjects may be parties as complainants, accused, plaintiffs or defendants, according to Siamese law; provided always, that in such cases the Consul or Vice-Consul shall be entitled to be present at the trial and to be furnished with copies of the proceedings, which, when the defendant or accused is a British subject, shall be supplied free of charge, and to make any suggestions to the judge or judges which he may think proper in the interests of justice; provided, also, that the Consul or Vice-Consul shall have power at any time before judgment, if he shall think proper in the interests of justice by a written requisition under his hand, directed to the judge or judges, to signify his desire that any case in which both parties are British subjects, or in which the accused or defendant is a British subject, be transferred for adjudication to the British Consular Court at Chiangmai and the case shall thereupon be transferred to such last mentioned Court accordingly, and be disposed of by the Consul or Vice-Consul, as provided by Article II of the Supplementary Agreement of 13th May, 1856. . . .

IX. In civil and criminal cases in which British subjects may be parties, and which shall be tried before the said judge or judges, either party shall be entitled to appeal to Bangkok; if a British subject, with the sanction and consent of the British Consul or Vice-Consul and in other cases by leave of the presiding judge or judges.

In all such cases a transcript of the evidence, together with a report from the presiding judge or judges, shall be forwarded to Bangkok, and the appeal shall be disposed of there by the Siamese authorities and Her Britannic Majesty's Consul-General in consultation. Provided always that in all cases where the defendants or accused are Siamese subjects the

Siamese in the integrity of their own institutions. Indeed so satisfactory to both parties did these arrangements work that they were extended later to eight other provinces in northern Siam.²⁷

Between 1883 and 1898 no treaties were made concerning matters of jurisdiction. On February 25, 1898, a treaty²⁸ with Japan, to continue in force for ten years and from year to year thereafter, was signed at Bangkok which, though containing no reference itself to jurisdiction, had annexed to it a protocol in which is found the following:

1. The Siamese Government consent that Japanese consular officers shall exercise jurisdiction over Japanese subjects in Siam until the judicial reforms of Siam shall have been completed, that is, until a criminal code, a code of criminal procedure, a civil code (with exception of a law of marriage and succession), a code of civil procedure and a law of constitution of the courts of justice shall come into force.

The Japanese protocol marked a very real advance notwithstanding that it established consular jurisdiction in favor of a nation which had not been entitled to it theretofore, as it contained, for the first time in the history of extritoriality in Siam, a recognition of the principle that consular jurisdiction was a temporary expedient and not a permanent arrangement. It is interesting to note that, at the time of the signing of the treaty with Siam, Japan had secured from those Powers to which she had granted consular jurisdiction a similar promise to relinquish the system upon the promulgation of the Japanese codes, a promise which was redeemed the following year when the codes were put into force. The treaty between Japan and Siam makes the end of consular jurisdiction dependent upon the completion of certain designated reforms of the Siamese legal system upon the accomplishment of which Japanese subjects are to be submitted to the Siamese courts without any guarantees whatever.²⁹

During the following year an agreement,³⁰ dated June 11/23, 1899, was final decision on appeal shall rest with the Siamese authorities; and that in all other cases in which British subjects are parties the final decision on appeal shall rest with Her Britannic Majesty's Consul-General. . . .

XIII. Except as and to the extent specially provided, nothing in this treaty shall be taken to affect the provisions of the Treaty of Friendship and Commerce between the King of Siam and Her Majesty of the 18th April, 1855, and the Agreement Supplementary thereto of the 13th May, 1856. . . .

²⁷ Extended to Muang Nan and Phre by exchange of notes dated December 31, 1884, and January 10, 1885, and to Muang Than, Raheng, Sawankalok, Sukothai, Utaradit and Pichai by notes dated September 28, 1896. *British and Foreign State Papers*, Vol. 88, pp. 33, 34.

²⁸ *Ibid.*, Vol. 90, pp. 66, 70.

²⁹ The Siamese judicial reforms, though much in the way of modern legislation had been accomplished before, really began in earnest in 1892 with the reorganization of the Ministry of Justice. The Penal Code was put into force in 1908. The Civil and Commercial Code will be promulgated during 1922, and the work on the other codes is far advanced.

³⁰ *British and Foreign State Papers*, Vol. 92, p. 109.

entered into between Siam and Russia by which, pending the conclusion of a treaty of friendship and commerce, Russian subjects were permitted to enjoy, in all that concerns jurisdiction, commerce, and navigation, all the rights and privileges granted to the subjects of other nations. No final treaty was ever concluded. The Russian agreement was not, therefore, as satisfactory from the Siamese standpoint as the Japanese protocol of the previous year, but inasmuch as it was only a temporary arrangement, it did not mark a definite step backward along the line of progress started by the Indian treaty of 1874.

Up to this time there had never been any definition of the persons entitled to registration at consulates under the provisions of the treaties. The extension of the possessions of Great Britain and France in the Far East had resulted in bringing under the protection of those Powers a large number of Asiatics who had previously been subject to Siamese jurisdiction during any sojourn they might make in Siam. Registration at the consulates of some of the countries having Asiatic subjects and protégés was not always confined to those entitled to it, and offenders against the criminal laws of Siam not infrequently appeared with letters of protection and certificates of registration which they sought to use for the purpose of preventing their trial and possible conviction in a Siamese court. The admission of a person to registration at a consulate was always made the basis of a claim that the registrant was not subject to Siamese jurisdiction, even though the registration had been improper. The correction of the register was a matter for the particular consulate and there was no procedure by which the Siamese Government could institute proceedings to have the question decided. A Siamese court, conceivably, might reject the registration certificate but if this was done a diplomatic clash was inevitable. The first arrangement providing for a change in these respects was that contained in an agreement²¹ between Great Britain and Siam, signed November 29, 1899. It was agreed that registration should be confined to the following categories of persons:

1. All British natural born or naturalized subjects other than those of Asiatic descent.
2. All children and grandchildren born in Siam of persons entitled to be registered under the first category who are entitled to the status of British subjects in contemplation of English law. Neither greatgrandchildren nor illegitimate children born in Siam of persons mentioned in the first category are entitled to be registered.
3. All persons of Asiatic descent born within the Queen's dominions or naturalized within the United Kingdom or born within the territory of any Prince or State in India under the suzerainty of or in alliance with the Queen. Except natives of Upper Burma or the British Shan States who became domiciled in Siam before January 1st, 1886.
4. All children born in Siam of persons entitled to be registered under the third category. No grandchildren born in Siam of persons

²¹ *British and Foreign State Papers*, Vol. 91, p. 101.

mentioned in the third category are entitled to be registered for protection in Siam.

5. The wives and widows of any persons who are entitled to be registered under the foregoing categories.

This agreement, also, provided for the holding of a joint inquiry by the British and Siamese authorities should any question arise as to the right of any person to hold a British certificate of registration or as to the validity of the certificate itself.

Agreements having a similar purpose have been concluded with The Netherlands, May 1, 1901; France,²² February 13, 1904; Denmark,²³ March 24, 1905; and Italy,²⁴ April 8, 1905.

Great Britain and France have large numbers of Asiatic subjects and protégés in Siam as has, also, in lesser degree, The Netherlands. These agreements, therefore, removed to a very large extent, though not entirely, what had been a source of irritation to the Siamese Government. No arrangements of this kind, though, have been made with the other treaty Powers, some of which, chiefly Portugal, have considerable numbers in Siam who claim their protection.

The convention of 1904 with France and those of 1905 with Denmark and Italy, to which reference has just been made, modified very considerably the jurisdictional régime established by the earlier treaties. The French convention provided that, in the provinces of Chiengmai, Lakhon, Lampoon, and Nan, all criminal and civil cases involving French *ressortissants*, including quite clearly French citizens, should be tried in the Siamese International Courts. The consul was given the right to be present at hearings and to make such observations as might seem to him desirable in the interests of justice. In addition, if the defendant was French or a French protégé, the consul might evoke the case for trial before him. In all of the other provinces of Siam, French *ressortissants* remained, as before, as to all those civil and criminal matters in which they might be concerned as defendants, under the jurisdiction of the consul. It was, however, provided that in civil cases in which the defendant was Siamese the action should be brought in the Siamese Court for Foreign Causes. Appeals from both the International Courts and the Court for Foreign Causes were to be brought to the Siamese Court of Appeal for Bangkok.

The Italian convention of 1905 contained an arrangement similar to that in the French convention just described, the list of provinces to which it was to be applied being identical. The Danish convention of the same year was, also, practically identical, but in addition to the provinces named in the French and Italian conventions, included Phre.

²² *British and Foreign State Papers*, Vol. 97, p. 961.

²³ Pitkin, *Siam's Case for Revision of Obsolete Treaty Obligations*, Supp., p. 190.

²⁴ Pitkin, *op. cit.*, Supp., p. 195.

A treaty,³⁵ with protocol, between Siam and France, signed March 23, 1907, still further extended Siamese jurisdiction. By it all French Asiatic subjects and protégés, throughout Siam, registered at French consulates after the date of the treaty, were submitted to the jurisdiction of the ordinary Siamese courts, except those in two provinces, Udorn and Isarn. All such subjects and protégés, registered at French consulates at the date of the treaty, and those in Udorn and Isarn provisionally and without reference to the date of their registration, were submitted to the jurisdiction of the Siamese International Courts subject to the exercise by the consul of the privilege of evocation under the terms of the convention of 1904, but this privilege was to cease as to all matters coming within the scope of codes and laws regularly promulgated and put into force after they had been communicated to the French Legation. The régime of the International Courts was to come to an end and their jurisdiction transferred to the ordinary Siamese Courts after the promulgation and coming into force of the new codes. All judgments on appeal were required to bear the signatures of two European judges and a resort *en cassation* against the judgments of the Court of Appeal could be made to the Supreme Court or San Dika, which is its Siamese name.

The requirement that judgments of the Court of Appeal, in matters coming from the International Courts, should bear the signatures of two European judges is the first reference in the Siamese treaties to the presence of foreigners as judges or advisers in the Siamese service. No treaty had theretofore required the participation at any stage of the proceedings of foreign advisers or judges, though the Siamese Government had made free use of the services of foreigners in the administration of justice for a number of years³⁶ both in cases involving Siamese litigants only as well as in those to which foreigners were parties.

³⁵ *British and Foreign State Papers*, Vol. 100, p. 1028.

³⁶ Mr. R. J. Kirkpatrick, *docteur en droit*, appears in the Bangkok Directory for 1895 as Legal Adviser to the Ministry of Justice, which had been reorganized in 1892. In the Directory for 1898, Mr. Kirkpatrick is listed as a judge of the Court of Appeal. The Directory for 1899 gives the names of five Europeans as Assistant Legal Advisers and Mr. Kirkpatrick is stated to be a member of the Supreme Court. In 1900 there were nine foreigners employed as Legal Advisers or Assistant Legal Advisers by the Ministry of Justice. It must not be forgotten that in 1892 and for ten years thereafter the Siamese Government had the services of M. Rolin Jacquemyns, a distinguished Belgian jurist, as General Adviser. He was succeeded in 1902 by Professor Edward H. Strobel, then Bemis Professor of International Law in the Harvard Law School, who died in Siam in 1908. Professor Strobel's successor was Professor Jens I. Westengard, also of the Harvard Law School. Professor Westengard served as General Adviser until his retirement in 1915. Mr. Wolcott H. Pitkin was then appointed Adviser in Foreign Affairs and served for two years. Mr. Pitkin was a graduate of the Harvard Law School and had been Attorney General of Porto Rico.

At the present time, there is in the Ministry of Justice, a Judicial Adviser, who sits regularly as a judge of the Supreme Court. There are, also, five Legal Advisers, of whom one sits as a judge of the Supreme Court and three as judges of the Court of Appeal. In

The French treaty of 1907 was quickly followed by a new British treaty, in some respects the most important since the treaty of 1855. This treaty,³⁷ signed March 10, 1909, followed the precedent set in the French treaty of 1907 and divided British subjects in Siam into two classes, those registered at British consulates before the date of the treaty and those registered afterwards. The British treaty, however, went far beyond the French in that it placed all British subjects in Siam, whether of European or Asiatic origin, under the jurisdiction of the Siamese courts. This retrocession of jurisdiction was regulated in an annexed protocol. Jurisdiction over British subjects of whatever origin, throughout Siam registered before the date of the treaty, was transferred to the Siamese International Courts established by the treaty of 1883, the powers of which were extended so as to include the whole of the kingdom. It was provided that these courts should come to an end and their jurisdiction be transferred to the ordinary Siamese courts after the promulgation and coming into force of the Siamese codes, namely, the Penal Code,³⁸ the Civil and Commercial Codes, the Code of Procedure and the Law for Organization of Courts. All other British subjects were remitted to the jurisdiction of the ordinary courts under the conditions defined in the protocol.

This protocol provided for the establishment of International Courts, which it must be remembered are not in any sense mixed tribunals in the Chinese sense but strictly Siamese courts, at such places as might be thought desirable from the standpoint of the good administration of justice. Their jurisdiction was to extend to all civil and commercial matters to which British subjects were parties, and in penal matters to breaches of law of every kind whether committed by British subjects or to their injury. The privilege of evocation was to be exercised in accordance with the terms of the treaty of 1883 but was to cease as to all matters coming within the scope of codes or laws regularly promulgated as soon as the text of such codes or laws was communicated to the British Legation. Change of venue from the provinces to Bangkok or before the judge who would try the case if it had been transferred to Bangkok, might be demanded by a British subject in the position of defendant or accused and would be granted if the court considered the change desirable. Notice of all such applications was to be given to the British consular officer. Appeals were to be adjudged by the Court of Appeal of Bangkok and notice of all such appeals was to be communicated to the consul who was permitted to give a written opinion to be annexed to the record. Appeals from the judgments of the Court of Appeal on questions of law were to lie to the Supreme or Dika Court.

In addition, there are fourteen Assistant Legal Advisers. These Legal Advisers and Assistant Legal Advisers are of British, French, and Belgian nationality.

[The writer has failed to state that he is himself a judge of the Supreme Court of Siam. The Editors.]

³⁷ *British and Foreign State Papers*, Vol. 102, p. 126.

³⁸ This code had already come into force in 1908.

So far as the guarantees just outlined are concerned there is no considerable variation from the provisions of the French treaty and protocol of 1907 but there are other provisions which go far beyond the requirements of those documents. The French protocol required that all judgments on appeal from the International Courts should bear the signatures of two European judges. The British protocol extends this to appeals from the ordinary courts as well. The French protocol contains no reference to the sitting of advisers in either International or ordinary courts of first instance, while the British protocol has the following:

Section 4. In all cases whether in the International Courts or in the ordinary Siamese Courts, in which a British subject is defendant or accused, a European legal adviser shall sit in the Court of First Instance. In cases in which a British born or naturalized subject not of Asiatic descent may be a party, a European adviser shall sit as a judge in the Court of First Instance and when such British subject is defendant or accused the opinion of the adviser shall prevail.

The treaty of 1909 and the annexed protocol mark an advance from the Siamese standpoint in that jurisdiction over all British subjects, regardless of origin, was transferred to Siamese courts. This retrocession of jurisdiction, however, was safeguarded by many restrictions some of which appear for the first time in the history of Siamese treaties. The promulgation of the Siamese codes will not have the effect of doing away with these restrictions for, with the exception of the privilege of evocation which terminates when the codes come into force and the cessation at that time of the jurisdiction of the International Courts, they continue into the ordinary Siamese courts in all cases in which British subjects are involved.

Except, therefore, as to evocation, the exercise of which comes to an end when the codes are put into force, all the other restrictions upon the surrender of jurisdiction may continue forever unless they are modified or ended through the somewhat uncertain processes of diplomatic negotiation, for the treaty does not contain any provision permitting a complete denunciation. Neither the reconstruction of Siamese law nor the completion of the reorganization of the judicial system and the development of a sufficiently large corps of Siamese judges with training and experience enabling them to satisfy reasonable European standards of judicial performance, will of themselves result in freeing Siam from the restrictions contained in the treaty of 1909.

The effect of the treaty of 1909 just alluded to was recognized to a limited extent by the British plenipotentiary by whom the treaty was signed, for, in a letter³⁹ bearing the same date as the treaty and addressed to the Siamese Minister for Foreign Affairs, he said:

With reference to the guarantees contained in the first paragraph of Article 4 of the Jurisdiction Protocol, I have the honour to state that His Majesty's Government will be prepared in due course to consider

³⁹ Pitkin, *op. cit.*, Supp., p. 223.

the question of a modification of or a release from this guarantee when it shall be no longer needed. His Majesty's Government are also willing that, in negotiations in connection with such a modification or release, the matter shall be treated upon its merits alone and not as a consideration for which some other return should be expected.

However, the conditions which must be satisfied by the Siamese Government, before it can be regarded that the guarantees in the first paragraph of Article 4, which are by no means all the guarantees contained in the treaty and protocol, are no longer needed, are not set out and the question of securing modifications of the system or its abolition remains, as before, the subject of diplomatic negotiation.

A treaty⁴⁰ with Denmark, signed March 15, 1913, extended the system of the British treaty and protocol of 1909 to Danish subjects, but the guarantees were given only through a most favored nation clause and not directly.

Siam's entry into the war on July 22, 1917, on the side of the Allied and Associated Powers, had the effect of terminating the consular jurisdiction theretofore exercised by Germany and Austria-Hungary. The Treaty of Versailles of June 28, 1919, contains, in Article 135, a recognition by Germany of the termination of all treaties, conventions, and agreements with Siam, including all rights of extritorial jurisdiction, as from July 22, 1917. The same provision is contained in the treaty of peace with Austria of September 10, 1919, in Article 110, and in the treaty of peace with Hungary of June 4, 1920, in Article 94.

The latest treaty⁴¹ concluded by Siam is that with the United States, signed at Washington on December 16, 1920, the ratifications of which were exchanged in Bangkok September 1, 1921. Jurisdiction is dealt with in an annexed protocol, which provides that consular jurisdiction as theretofore exercised by the American consul, except as to the trial of evoked cases, ceases and determines upon the exchange of ratifications, and that thereafter all citizens of the United States and persons, corporations, companies and associations entitled to its protection in Siam are to be subject to the jurisdiction of the Siamese courts. However, until the promulgation and putting into force of all the Siamese codes, namely, the Penal Code, the Civil and Commercial Codes, the Codes of Procedure and the Law for Organization of Courts, and for a period of five years thereafter, but no longer, the United States, through its diplomatic and consular officials in Siam, whenever in its discretion it deems it proper so to do in the interests of justice, may evoke any case pending in any Siamese court, except the Supreme or Dika Court, in which an American citizen or a person, corporation, company or association entitled to its protection, is defendant or accused. All evoked cases are to be disposed of by the diplomatic or consular official of the United States in accordance with the laws of the United States properly ap-

⁴⁰ *British and Foreign State Papers*, Vol. 107, p. 750.

⁴¹ 16 *American Journal International Law*, No. 1, Jan., 1922, *Official Documents*, p. 25.

plicable, except that as to all matters coming within the scope of codes or laws regularly promulgated and in force, the texts of which have been communicated to the American Legation, the rights and liabilities of the parties are to be determined by Siamese law. Appeals are to be judged by the Court of Appeal at Bangkok and an appeal on a question of law from the Court of Appeal lies to the Supreme or Dika Court. In cases arising in the provinces to which Americans are parties as defendants or accused, a change of venue may be had, should the court consider such change desirable, and the trial may then take place either at Bangkok or before the judge in whose court the case would have been tried at Bangkok.

It will be seen that the United States has not seen fit to adopt the system of advisers as established in the British treaty of 1909. Instead it has preferred to rely upon evocation for a limited period as the sole guarantee of satisfactory action by the Siamese courts, though there is nothing in the protocol to prevent the Siamese Government from providing advisers to sit in American cases whenever they may deem it desirable to do so. The extension of evocation to the Court of Appeal is, however, another novelty in the already too confused course of development of the Siamese treaties, but its effect in further confounding the Siamese courts has been more than overcome through the provision limiting the duration of the guarantee. For the first time since 1855, when the system of consular jurisdiction began, a Western nation has bound itself to submit, after the lapse of a definite time, all those entitled to look to it for protection to the courts of Siam without guarantees, except those involved in arrangements for appeal and change of venue.

SUMMARY

At the present time, full consular jurisdiction exists as to the subjects and nationals of Portugal, The Netherlands, Sweden, Norway, Belgium, Spain, Japan, and Russia.⁴²

Italian nationals and subjects in five of the northern provinces are under the jurisdiction of the International Courts, while in the rest of Siam full consular jurisdiction prevails.

French citizens and French subjects of non-Asiatic origin, except in five northern provinces, where they are subject to the jurisdiction of the International Courts, are still withdrawn from Siamese jurisdiction and full consular jurisdiction in the remainder of the country exists as to them. French Asiatic subjects and French protégés are, however, under Siamese jurisdiction. Those registered at French consulates before March 23, 1907, are subject to the jurisdiction of the International Courts. Those registered after that date are under the jurisdiction of the ordinary courts. As to the former group, the French consul has the privilege of evocation and judgments in the Court of Appeal must bear the signatures of two European judges.

⁴² At the present time, there is, however, no Russian consular court in Siam.

British subjects of whatever origin, registered at British consulates before March 10, 1909, are under the jurisdiction of the International Courts, and those registered after that date, under the jurisdiction of the ordinary courts. As to those subject to the jurisdiction of the International Courts, the consul has the privilege of evocation. In both courts, whenever a British subject is defendant or accused, a European legal adviser sits in the court of first instance. If British born or naturalized subjects of non-Asiatic descent are parties, the adviser sits as a judge, and if they are defendants or accused, his opinion prevails. Appeals from either the ordinary courts or the International Courts must bear the signatures of two European judges. The jurisdiction of the International Courts extends also, to cases involving breaches of law not merely by British subjects but to their injury as well.

The jurisdiction of the International Courts will come to an end upon the promulgation and putting into force of all the codes now in preparation. When this happens, the privilege of evocation associated with those courts ceases.

Danish subjects are under a régime substantially identical with that for British subjects but the guarantees are secured only by a most favored nation clause. Those registered at Danish consulates before March 15, 1913, are subject to the International Courts and those registered subsequently to the ordinary courts.

The British, French, Italian, and Danish consuls have the right to be present ⁴² at trials in International Courts of first instance when their nationals, subjects, or protégés, respectively, are parties, and to make observations in the interest of justice, and when appeals are taken, the British, French, and Danish consuls have the right to file written opinions to be annexed to the record.

Under arrangements with Italy, The Netherlands, Denmark, France, and Great Britain, the categories of persons entitled to enjoy consular jurisdiction or special privileges in Siamese courts have been strictly defined.

Citizens of the United States and others entitled to its protection are submitted to the Siamese courts, without distinction between International and ordinary courts. For a period ending five years after the promulgation and coming into force of all the codes, the United States may evoke, from any court except the Supreme Court, any case to which Americans and others entitled to its protection are parties as defendants or accused. In the trial of evoked cases, the laws of the United States will be applied except as to matters covered by Siamese codes and laws actually promulgated and in force and duly communicated to the American Legation, in which cases the rights and liabilities of the parties will be determined by Siamese law.

Nationals of the former German and Austro-Hungarian Empires, except in those cases in which they have become either French, Italian, or Danish, have now no treaty rights or privileges whatever. They would, therefore,

⁴² As the courts are open in Siam, there is no significance to be attached to this privilege.

be subject to the full jurisdiction of the Siamese courts just as are the nationals and subjects of other countries which have never had treaty rights in Siam.⁴⁴

"Cuba, which has no treaty relations with Siam, employs the good offices of the United States, under an arrangement between the United States and Siam made in 1902. At that time the United States had extraterritorial jurisdiction, but Siam, while willing to accept the good offices of the United States with regard to the protection of Cuban interests, was not desirous to extend extraterritoriality to Cuban nationals. Secretary Hay, in a dispatch to the American Minister in Bangkok, dated December 18, 1902, accepted this position and stated that the United States "does not regard the exercise of good offices by the United States representatives as involving a claim for Cuban citizens of the extraterritorial rights secured to United States citizens by treaty."

Prior to the War, Germany extended its good offices under similar arrangements to the citizens and subjects of Switzerland and Turkey. Swiss interests are now looked after by the United States.

Subjects of the Kingdom of the Serbs, Croats and Slovenes and citizens of Czecho-Slovakia are entitled to the good offices of France but are not privileged to claim extraterritoriality.

EDITORIAL COMMENT

THE CLAIMS AGREEMENT WITH GERMANY

The agreement between the United States and Germany providing for the determination of the amount of American claims against that State, signed at Berlin August 10, 1922, is not without significance. The mode of perfecting the contractual relationship between the parties, the choice of an umpire, and the function of the tribunal established thereunder, will obviously attract special attention.¹

The arrangement takes its place among the so-called executive agreements of the United States; it does not purport to be a treaty. The compact provides for a mixed commission (comprising a commissioner to be appointed by each party, and an umpire, to decide upon cases where the commissioners may disagree), to determine the *amount* to be paid by Germany in satisfaction of the financial obligations of that State under the treaty with the United States of August 25, 1921, securing to the United States and its nationals rights specified under the Resolution of the Congress approved July 2, 1921, and embracing rights under the Treaty of Versailles.²

The right of the Executive, incidental to his management of the foreign relations of the United States, to adjust international controversies involving the ascertaining of the amount of pecuniary claims against a foreign State, and by recourse to arbitral procedure, is not to be questioned. This is believed to be true regardless of the will of the individual claimant (when a private one), and irrespective of the public or private aspect of the particular claim, and for most purposes, without reference to the causes giving rise to complaint. The right of the President is thus not sharply defined according to whether the particular claim arose as an incident of war, or whether the government rather than a national happens to be the aggrieved party,³ or

¹ The text of the agreement is printed in the Supplement hereto, page 171.

² The Commission is to pass upon the following categories of claims more particularly defined in the treaty of August 25, 1921, and in the Treaty of Versailles:

(a) Claims of American citizens, arising since July 31, 1914, in respect of damage to, or seizure of, their property, rights and interests, including any company or association in which they are interested, within German territory as it existed on August 1, 1914;

(b) Other claims for loss or damage to which the United States or its nationals have been subjected with respect to injuries to persons, or to property, rights and interests, including any company or association in which American nationals are interested, since July 31, 1914, as a consequence of the war;

(c) Debts owing to American citizens by the German Government or by German nationals.

³ Doubtless in the adjustment of certain classes of essentially public claims, and notably of those hardly capable of exact measurement or appraisal in pecuniary terms, and of large

whether a national whose cause has been espoused by his government is satisfied with the procedure or result.

The new agreement with Germany, having no political aspect whatever, is far from manifesting the full extent of the agreement-making power possessed by the President. As compared with the protocol signed at Washington August 12, 1898, fixing the basis of conditions for peace with Spain, or with the arrangement of September 7, 1901, establishing the burdens to be borne by China in consequence of the "Boxer" troubles of the previous year, or with the executive action in formulating in conjunction with the Associated Powers the basis of an arrangement productive of the armistice concluded with Germany in 1918, the recent agreement appears to be a very moderate exercise of Presidential power. While it entails the ascertaining of the limit of an aggregate sum of vast proportions, the amount involved hardly affects the theory of procedure or betokens recourse to a fresh principle.

Despite arguments to the contrary, it may be gravely doubted whether the Trading with the Enemy Act of October 6, 1917,⁴ purported to deprive the Executive of any right possessed by him to conclude an agreement such as that of August tenth. That Act did declare that after the end of the war, any claim of an enemy or of an ally of an enemy to any money or other property received and held by the Alien Property Custodian or deposited in the United States Treasury, should be settled as Congress might direct.⁵ This was far from an assertion of control over American claims against Germany or its nationals, and still less over the mode of ascertaining their extent. It should be observed that it is the determination of the amount, rather than of the basis or mode of satisfaction of those claims, which is made the function of the commission established under the convention.

It would be difficult to maintain that any existing contractual arrangement with Germany tied the hands of the President, forbidding an executive agreement such as that which he has concluded. The treaty with Germany of August 25, 1921,⁶ conferring upon the United States comprehensive and specified privileges under the Treaty of Versailles of June 28, 1919, made careful provision that the United States was not to be bound to participate in any commission established under that treaty or any agreement supplemental thereto. Moreover, it did not prescribe that should the United States and Germany elect to agree to have recourse to a mixed arbitral tribunal such as that outlined in Article 304 of the Treaty of Versailles, the compact should assume the form of a treaty, or that any mixed commission political concern to the nation, the President would and perhaps should condition the consent of the United States upon the approval of the Senate, and accordingly incorporate the agreement in a treaty.

⁴ 40 Stat. 411; also SUPPLEMENT to this JOURNAL, Vol. 12 (1918), p. 27.

⁵ Section 12.

⁶ U. S. Treaty Series, No. 658; also SUPPLEMENT to this JOURNAL, Jan. 1922 (Vol. 16), p. 10.

to be established as a means of ascertaining the amount of American claims against Germany, should be necessarily governed by the terms of the Treaty of Versailles.

It should be noted, however, that the Senate in its resolution of October 18, 1921, advised and consented to the ratification of the treaty of August 25, 1921, subject to the understanding made a part of the resolution of ratification, that "The United States shall not be represented or participate in any body, agency or commission, nor shall any person represent the United States as a member of any body, agency or commission in which the United States is authorized to participate by this treaty, unless and until an Act of the Congress of the United States shall provide for such representation or participation." The action taken during the last days of the Second Session of the Sixty-seventh Congress, in appropriating funds for American participation in and representation on the Claims Commission, would appear to satisfy the requirement in respect to Congressional authorization. Such must have been the view of the Senate to whose attention the text of its resolution was called.⁷ In a word, the claims agreement appears to have been concluded in pursuance of the treaty of August 25, 1921, and arrangements for the operation of the commission to have been made by no process at variance with the terms on which that treaty was accepted.

Simultaneously with the signing of the agreement, the German Government expressed a desire to have an American citizen appointed as umpire, and requested the President of the United States to make the designation accordingly. Pursuant to that request, the President named the Honorable William R. Day, Associate Justice of the Supreme Court of the United States, to serve in that capacity. The reliance thus placed upon the sense of justice of the claimant State, and upon the fitness of one of its nationals to decide as umpire upon cases productive of disagreement, is an unusual expression of confidence in the United States. The President's choice of an umpire must assure Germany that that confidence has not been betrayed, and that the judicial function of that officer will be exercised in the same spirit as though he were a neutral person selected by reason of his known freedom from prejudice towards either contracting State.

However prolonged and exacting may prove to be its task, the commission begins its labors under conditions which inspire the hope that through the influence of its distinguished umpire, it may consciously and rigidly fulfill the highly beneficent function of an international court of justice, and thereby renew the confidence of America and Europe in the judicial settlement of international differences not lacking a justiciable character.

CHARLES CHENEY HYDE.

⁷ For an interesting discussion of the Claims Convention in the Senate, see, *Congressional Record*, Sept. 21, 1922, Vol. 62, No. 238, pages 14073-14093.

AMERICAN INTERVENTION IN HAITI

Referring to previous editorial comments in this JOURNAL and in particular to the editorial entitled *International Responsibility in Haiti and Santo Domingo* in the July issue of the present year, it is of special interest to note the conclusions of the Select Committee on Haiti and the Dominican Republic appointed by the United States Senate.¹ Because of the negotiations under way looking to the early termination of military government in Santo Domingo this report deals only with the situation in Haiti.

It should be recalled that these findings are the result of the most conscientious investigation both in the Island of Santo Domingo and in Washington. The committee welcomed the testimony and the free expression of the views of all persons believed to be cognizant of conditions in the two republics. It also gave due weight to the evidence and opinions of persons who because of popular passions and prejudice in these countries did not dare to speak freely in the open hearings of the committee.

It is essential, furthermore, to emphasize the fact that this report is of a strictly non-partisan character—the conclusions of Republicans and Democrats concerning the original act of intervention by the Administration of President Wilson in 1915, and the subsequent acts of the Administration of President Harding. Under such circumstances there was ample opportunity for prejudiced opinions and inclinations to support the serious charges brought against the United States by American citizens of repute because of the original act of intervention and subsequent alleged abuses of administration and prolonged occupation.

A further fact worthy of notice is that the committee reveals the utmost candor in admitting certain abuses, and notably in recognizing that: "The American representatives in the opinion of your committee influenced the majority of the Assembly (of Haiti) in the choice of a president. Later, they exercised pressure to induce the ratification by Haiti of the convention in September, 1915, precisely as the United States had exercised pressure to induce the incorporation of the Platt Amendment in the Cuban Constitution, thus to assure the tranquility and prosperity of Cuba." (Page 7.)

Inasmuch as this openly avowed constraint of the Haitian officials by the American Government has been the subject of bitter comment by reputable American citizens, it is imperative to call attention to the reasons for the original intervention and the policy adopted by the United States. The statements of the committee on these points deserve to be quoted:

In brief, before American intervention there had been no popular representative or stable government in Haiti. The public finances were in disarray, public credit was exhausted, and the public revenues were wasted or stolen. Highways and agriculture had given way to the jungle. The people, most of whom lived in wretched poverty,

¹ See Report No. 794, 67th Cong., 2d Sess.

were illiterate and spoke no other language than the native Creole. The country and its inhabitants have been a prey to chronic revolutionary disorders, banditry, and even during periods of comparative peace, to such oppressive and capricious governors that the great mass of the people who, under happier circumstances might have become prosperous peasant farmers, have had neither opportunity nor incentive to labor, to save, or to learn. They had no security for their property and little for their lives. Voodoo practices, of course, were general throughout the territory of the Republic. (Page 5.)

* * *

Testimony taken by the committee shows how the chronic anarchy into which Haiti had fallen, the exhaustion of its credit, the threatened intervention of the German Government and the actual landing of the French naval forces, all imperiled the Monroe Doctrine and lead the Government of the United States to take successive steps set forth in the testimony, to establish order in Haiti to help to institute a government as nearly representative as might be, and to assure the collaboration of the Governments of the United States and Haiti for the future maintenance of peace and the development of the Haitian people. (Page 7.)

Viewed in the light of these grounds for intervention and of the purpose of the United States to establish guarantees of order and prosperity, it is apparent that a certain measure of constraint on Haitian officials was logical and imperative. It would have been stultifying had the American Government permitted the officials of Haiti to perpetuate the very conditions which occasioned the intervention. The people of Haiti through their representatives were properly required to adopt certain measures which the United States believed essential for the achievement of its beneficent and altruistic policy. To protest against violations of representative government, of the sovereignty, independence and equality of a sister republic is to ignore the facts and the logic of the situation. Such protests would seem to imply that there is no international responsibility on the part of more fortunate nations towards those peoples who become the victims of bad government and of progressive anarchy. This extraordinary point of view amounts virtually to the cynical dogma that "every nation should be permitted to go to the Devil in its own way." It is a point of view fortunately held by but few extremists and has been effectively refuted by the candid, courageous report of the Senate Committee.

Concerning the results attained under American occupation, with due allowance for the mistakes and abuses of incompetent or criminal officials, the committee claims that:

Peace, sure and undisturbed peace, has been established throughout Haiti for the first time in generations. . . . Today, as old travelers will bear witness, for the first time in generations the men have come down freely from their hidden huts to the trails and to the towns. . . .

Although the Haitian Government has declined to employ American experts in the administration of internal revenue, nevertheless, under the insistence of the financial advisor and despite general business depression, the sum of internal revenue collected has increased threefold, although the internal revenue laws are unchanged. (Page 8.)

During the last three years \$5,000,000 of interest and principal have been paid. Today there is no interest or capital overdue. The foreign debt has been reduced by one-third. On the contrary, there is a surplus in the treasury and it is proposed to refund the outstanding debt to the great benefit of the Haitian tax-payer. (Page 9.)

The confidence placed in the Americans by the Haitian peasants and the approval frequently communicated to the committee by those who know and sympathize with the peasants and who are engaged in philanthropic or educational work among them negative the idea of any campaign of terrorism against the inhabitants such as agitators and professional propagandists, Haitian and American, would have appear. (Page 23.)

It may be set down to the credit of the American occupation and the treaty officials that the Haitian cities, once foul and insanitary, are now clean, with well-kept and well-lighted streets. The greater part of an arterial highway system opening up the heart of the country has been built. The currency, which once violently fluctuated under the manipulations of European merchants, has been stabilized, to the great advantage of the Haitian peasant. Arrears of amortization as well as of interest on the public debt have been paid, as also are regularly paid the salaries of the smallest officials. The steamship communications between Haiti and the United States are greatly improved. Trade and revenues are increasing. The revision of the customs and internal taxes, so important in the prosperity of Haiti and especially of its poorest classes, awaits the funding of the debt by a new loan. There is peace and security of property and person throughout the Republic. The peasant in his hovel or on the road to market is safe from molestation by brigand or official authority. A force of 2,500 gendarmes, insufficiently trained to cope with the caco outbreak in 1918, is now admirably disciplined. As its morale has improved, the force has become at once considerate and more efficient in the discharge of its duties. It is noteworthy that an increasing proportion of the commissioned officers are native Haitians, those promoted from the ranks to be supplemented by others, graduates of the newly established cadet school. In brief, under the treaty, the peace of the Republic, the solvency of its Government, and the security of its people have been established for the first time in many years. (Page 24.)

This, it must be conceded, is a fine record of accomplishment, and yet the Senate Committee "submits that the American people will not consider their duty under the treaty discharged, if, in addition to what has been accomplished, there are not placed within the reach of the Haitian masses, justice, schools, and agricultural instruction. The treaty itself makes no provision to consummate these things." (Page 24.)

The committee in no way suggests the desirability or the possibility of an immediate withdrawal of American forces and officials from Haiti. It urges the appointment of a commission "comprising a commercial advisor, an expert in tropical agriculture, and an educator of the standing and special experience of Doctor Moton" for the purpose of making "a survey of the need and opportunity for industrial and especially of agricultural instruction and development in a country which depends upon agriculture as its sole source of wealth." The committee believes that: "As wealth and revenues increase, schools, trails, and highways may be extended and as they are extended, in turn, the revenues will be further enhanced and so enable the further development of the public services."

The committee favors the abolition of military tribunals for the trial of natives accused of offences against public order or attacks upon the military and peace forces within the republic, but points out that "their abolition is conditioned upon certain precedent steps, among them a reform of the courts of first instance."

A significant recommendation of the committee is that the Haitian Government should restrict the great land holdings by foreign interests. This would seem to afford the logical answer to those violent critics of the policy of the United States Government in insisting on the change in the Haitian Constitution to permit the ownership of land by foreigners.

The committee complains with justice against the frequent changes in the personnel of the Latin American Bureau in the Department of State in Washington and of other officials charged with the supervision and execution of the policy of the American Government in Haiti. It insists that "there can be a rapid development in Haiti, moral, social, political, and economic, provided always that American policy be marked by continuity and by the spirit of service."

The report closes with these solemn words:

There are certain elements in Haiti which can balk and perhaps delay the rehabilitation of the country. They cannot prevent it. They can do much to further it. The obvious duty of patriotic Haitians is to uphold their own Government in effectively cooperating with that of the United States under the treaty, and so hasten the day when Haiti may stand alone. The alternative to the course herein suggested is the immediate withdrawal of American support and the abandonment of the Haitian people to chronic revolution, anarchy, barbarism, and ruin.

In the light of all the facts and in spite of acknowledged blunders, it would seem clear that the United States is under a moral mandate to assist in the rehabilitation of this unhappy republic and should not be diverted from its lofty mission by any base imputations against its original intervention or prolonged occupation.

PHILIP MARSHALL BROWN.

THE REVISION OF THE REPARATION CLAUSES OF THE TREATY OF VERSAILLES
AND THE CANCELLATION OF INTER-ALLIED INDEBTEDNESS

The Earl of Balfour, Acting British Secretary of State for Foreign Affairs, in a note respecting war debts sent to the diplomatic representatives at London of France, Italy, the Serb-Croat-Slovene State, Roumania, Portugal and Greece, on August 1, 1922, requested those governments to make arrangements for dealing to the best of their ability with the loans owing by them to the British Government. He took occasion to explain, however, that the amount of interest and repayment, for which the British Government asks, depends not so much on what the debtor nations owe Great Britain as on what Great Britain has to pay America. "The policy favored by His Majesty is", says the Earl of Balfour, "that of surrendering their share of German reparation, and writing off, through one great transaction, the whole body of inter-Allied indebtedness." But such a policy, he states, is difficult of accomplishment because, "with the most perfect courtesy, and in the exercise of their undoubted rights, the American Government have required this country to pay the interest accrued since 1919 on the Anglo-American debt, to convert it from an unfunded to a funded debt, and to repay it by a sinking fund in twenty-five years. Such a procedure is clearly in accordance with the original contract. His Majesty's Government make no complaint of it; they recognise their obligations and are prepared to fulfil them. But evidently they cannot do so without profoundly modifying the course which, in different circumstances, they would have wished to pursue. They cannot treat the repayment of the Anglo-American loan as if it were an isolated incident in which only the United States of America and Great Britain had any concern. It is but one of a connected series of transactions, in which this country appears sometimes as debtor, sometimes as creditor, and, if our undoubted obligations as a debtor are to be enforced, our not less undoubted rights as a creditor cannot be left wholly in abeyance".¹

The requirement of the American Government, referred to by the Earl of Balfour, is contained in the Act of Congress, approved February 9, 1922, "To create a commission authorized under certain conditions to refund or convert obligations of foreign Governments held by the United States of America." This commission, consisting of five members and known as the "World War Foreign Debt Commission" is, by the law, authorized, subject to the approval of the President, "to refund or convert, and to extend the time of payment of the principal or the interest, or both, of any obligation of any foreign Government now held by the United States of America, . . . arising out of the World War, into bonds or other obligations of such foreign Government in substitution for the bonds or other obligations of such

¹ The note has been printed and published as a British Parliamentary Command Paper, No. 1737 (Miscellaneous No. 5, 1922).

Government now or hereafter held by the United States of America, in such form and of such terms, conditions, date or dates of maturity, and rate or rates of interest, and with such security, if any, as shall be deemed for the best interests of the United States of America." A proviso limits the authority of the commission to extend the time of maturity of such bonds or other obligations beyond June 15, 1947, which is the last date of maturity of the war bonds subscribed by the American people from the proceeds of which these foreign loans were made, or to fix the rate of interest at less than $4\frac{1}{4}$ per centum per annum. The authority granted by the Act ceases at the end of three years and Section 3 expressly stipulates "That this Act shall not be construed to authorize the exchange of bonds or other obligations of any foreign Government for those of any other foreign Government, or cancellation of any part of such indebtedness except through payment thereof."²

In view of the previous history of proposals which sought to involve the Allied debt to America with the subject of the payment of war costs and reparations, and the categorical refusal of American representatives to consider them, the note of the Earl of Balfour of August 1, 1922, may be regarded as in the nature of a protest against this policy of the United States Government finally formulated and adopted in the Act of Congress of February 9, 1922.

It will be observed in the British note of August 1, 1922, that a revision of the reparation clauses is given as an inducement for the United States to cancel the war debts. In addition, certain reasons are given to justify the protest against the Act of Congress. The Earl of Balfour states that the Allies "were partners in the greatest international effort ever made in the cause of freedom; and they are still partners in dealing with some, at least, of its results. Their debts were incurred, their loans were made, not for the separate advantage of particular States, but for a great purpose common to them all, and that purpose has been, in the main, accomplished". Furthermore, he asserts that, among the many economic ills from which the world is suffering, "must certainly be reckoned the weight of international indebtedness, with all its unhappy effects upon credit and exchange, upon national production and international trade". And, he asks, "How can the normal be reached while conditions so abnormal are permitted to prevail?"

In order to make clear the full meaning, so far as America is concerned, of the British proposal of "writing off, through one great transaction, the whole body of inter-Allied indebtedness", it should be understood that America owes no debts that can be written off in return for a writing off of the debts owing to her, and the net result to America of the "one great transaction" would be the outright cancellation, without consideration, of the inter-Allied indebtedness to the United States, amounting in round numbers to \$10,000,000,000.

In the absence of the United States as a party to the Treaty of Versailles

² Public No. 139, 67th Congress.

and of American claims seriously affected by the reparation clauses of that treaty, one would naturally infer from the British protest that the United States was in some way responsible for the clauses which it is proposed to revise downwards if America will pay the price. The published accounts of the discussions leading up to the adoption of the reparation clauses of the treaty show that such is not the case. On the contrary, they show that these provisions were adopted in the face of the vigorous opposition of the American delegation. "The President and his financial advisers", writes Mr. Bernard M. Baruch, a principal American member of the Commission on Reparation of the Peace Conference, "passed days and weeks vainly endeavoring to convince their colleagues in the Allied and Associated Governments that it was impossible for Germany to pay anything like the sums required under the categories. They further submitted that even if this were possible, the Allied Governments could not afford, and would in time recognize that it was not to their advantage, to exact payments that could be made only at the expense of their own trade. Therefore, in the American view it was to the interest of the Allied and Associated Governments to fix a reasonable, definite amount that Germany could pay and that they could afford to have her pay."³

The same authority has supplied the verbatim text of a memorandum of the American delegation in support of its contention for the fixation of a definite sum of reparations. The memorandum gives the two principal arguments against that course as follows:

(a) It is impossible to tell today just how much Germany might be able to pay within the next generation. A miscalculation might release Germany, at heavy cost to the Allies, from a just liability which, it would subsequently develop, Germany was fully capable of discharging. Germany's liability should, therefore, be expressed elastically, so as to insure the utilization of Germany's full future capacity of payment to make good the almost unlimited damage caused by her.

(b) The political situation among the Allies is so unsettled, and the popular expectation of relief by payments from Germany runs so high, that it might have serious political consequences to name definitely Germany's liability. Even the highest figure which has been considered would disappoint popular expectations.⁴

The answer of the American delegation to these arguments is given in the same memorandum as follows:

With respect to the latter argument, it may be observed that the financial and economic situation of Europe is so serious that no government would adopt, merely as a matter of domestic politics, a policy which is not defensible on its merits. The only political consequences to be taken into account are those relating to the stability of govern-

³ *The Making of the Reparation and Economic Sections of the Treaty*, New York: Harper and Brothers, 1920, p. 52.

⁴ *Ibid.*, p. 67.

ment in general. It is conceivable that a severe popular disillusionment at this time might lead to social unrest, which would have really serious national and international consequences. It seems far more probable that to continue to perpetuate uncertainty as to the amount of Germany's payments will merely postpone an awakening until a time when the situation may be even more critical. In the intervening period the people will not have exerted their fullest efforts to aid themselves, as would have been the case had they earlier realized their real situation.

With regard to the argument that there is danger today of underestimating Germany's capacity to pay, it may be said that this risk is perfectly real and fully recognized. It is, however, a risk which must be balanced against the risk of attempting to secure from Germany more than she can pay, or adopting a procedure which destroys Germany's incentive to pay. Of the two risks the latter is infinitely the more serious. To seek too much jeopardizes the whole; to obtain too little involves only the loss of the difference between what is, and what might have been, paid.

It is further to be observed that what the world requires, and requires immediately, is a new basis of credit. A dollar today is probably worth two dollars five years from now. A definite obligation assumed by Germany, under conditions which warrant us in believing that Germany herself has the will and believes she has capacity to discharge such obligation, will serve as an immediate basis of credit. A far larger amount assumed under equally satisfactory conditions eighteen months from now would not begin to have the same practical value. Also a larger amount imposed today at the point of the bayonet and in the face of declarations by Germany (which will be accepted by conservative persons throughout the world) that the sum is far in excess of her capacity, would prove of little or no value as a basis of credit.⁵

The American memorandum contains the following criticism of the reparation plan then under consideration and finally adopted by the Allies:

The present reparation plan is, in our opinion, open to the serious objection that it may, in practice, operate to destroy economic incentive on the part of the present generation in Germany. Germany is set a task without end, and the more she labors the more will be taken from her. Furthermore, little is obtainable under the plan in the immediate future, aside from the deliveries of bonds, which will not command the confidence of investors because, among other things, they may be followed by an indefinite amount of similar bonds. And it will be in the interests of Germany herself to destroy popular confidence in the initial installments of bonds taken from her, as once these bonds acquire any marketable value, still further issues will be taken from Germany.

Europe's need is immediate. Any substantial delay in securing from Germany an obligation having a substantial present value may involve consequences which will approach a disaster. The risks involved in delay far outweigh the difference between such definite sum as might be fixed today and the most optimistic estimates which have been made as to Germany's capacity.⁶

⁵ *The Making of the Reparation and Economic Sections of the Treaty*, pp. 67-68. ⁶ *Ibid.*, pp. 68-69.

The view which gave primary consideration to the exigencies of British and French internal politics prevailed over the dictates of farseeing statesmanship, and now, over three years after the signature of the treaty, the question of reparations appears to be as far from settlement as it was then, Europe in the meantime suffering the evils of the policy of opportunism so clearly foreseen and definitely pointed out by the American delegation to the Peace Conference. Under the circumstances, is it reasonable to expect America to forego the payment of a sum, the lending of which added two-fifths to the national debt, in order to induce the Allies to pursue now a policy urged upon them by American representatives at the Peace Conference and which, as demonstrated by subsequent events, they should have then adopted in their own self-interest? ⁷

The argument repeated by the Earl of Balfour that America was a partner in the prosecution of the war and is consequently responsible for a full share of the partnership liabilities dates back also to the Peace Conference. Mr. Baruch points out that during the discussion of the amount of German reparations, the following intimation was conveyed to the American delegation:

If you ask us to lessen our claims upon Germany for indemnity, which she admits she owes, what will you do for the loan made to us for the prosecution of a war which was as much your war as our war, the amount of which clearly exceeds our ability to pay unless we are allowed to get the last possible dollar out of Germany? ⁸

Mr. Baruch explains that "of course, it was generally recognized that the indebtedness of the Allies to the United States had no relation to Germany's reparation obligations to the Allies", that "the United States, relatively speaking, had no great direct interest in what Germany was to pay, but she had a sincere desire for all nations concerned that the world should not be thrown into disorder and its commerce deranged by an attempt to create and collect a debt which could not be paid", but that "the most that the

⁷ In this connection see the article on "Reparations" by Mr. Thomas W. Lamont, one of the American financial representatives at the Peace Conference, in the volume entitled *What really happened at Paris*, New York, Charles Scribners Sons, 1921. In discussing "The Power of Clemenceau and Lloyd George", Mr. Lamont says:

"It sounds absolutely unwarranted for me to place my opinion against those of two chiefs of state like Clemenceau and Lloyd George; yet I am convinced, as I was at the time, that they were wrong, that they entirely misread their own constituencies when they believed that if they adopted the business course of fixing the German indemnity and proceeding to collect it they would, because of the disappointment of their voters, be turned out of office. . . . All I feel is, if at this critical juncture both M. Clemenceau and Mr. Lloyd George had had a little more confidence in their own strength they would have joined with President Wilson and settled this question of German indemnity once for all, thus avoiding, to a considerable measure, the terrible consequences of continued unsettlement that have plagued Europe and the whole world since the Peace Conference adjourned and left the German indemnity question open." (pp. 265, 268).

⁸ *The Making of the Reparation and Economic Sections of the Treaty*, p. 52.

American delegation could do was to urge upon its associates, in their own and in the whole world's interest, the necessity and practical wisdom of fixing Germany's liability. When, however, they were not persuaded, the American delegation felt that it had done all that it properly could do in the circumstances. To have adopted any other course and to have insisted as a matter of right that creditors of Germany should waive in part their admittedly just claims against Germany might have encouraged the effort to reopen the whole question of Interallied indebtedness and refinancing".⁹

It will be interesting at this point to refer to some of the plans brought forward during the Peace Conference which involved American participation in the payment of the European costs of the war and reparations. Mr. Baruch refers to a proposal brought forward

to the effect that bonds for part of the reparations to the value of £1,800,000,000 (\$9,000,000,000) as from January 1, 1925 (the date from which they bear interest), should be issued by enemy states or by certain states acquiring enemy territory. The proposition further provided that these bonds should be guaranteed by the principal Allied and Associated Governments, by the three Scandinavian Governments, and by the Governments of Holland and Switzerland.

It was proposed under this scheme that the United States should guarantee 20 per cent of the issue. In the event of any of the guarantor Governments failing to meet their guarantees, the remaining guarantor Governments might be obligated to double their original proportionate share. That might have made it necessary for the United States to guarantee 40 per cent, or about \$3,450,000,000. No serious consideration was ever given to this plan.¹⁰

The origin of the proposal is not disclosed, but, since it is stated in pounds sterling, it was probably of British origin. Other schemes having the same object in view, presumably French in origin, have been brought to light by M. André Tardieu, one of the leading French representatives at the Peace Conference. He says:

Besides the guarantees of payment taken directly from Germany, right and reason suggested others based upon the unity existing among the Allies. After unity in war, unity in peace. Could not sacrifices borne in common include, after the losses in lives and property, the costs of settlement—the richest helping the less rich to bear their share of the burden? ¹¹

This burden he places at 700,000 millions as the cost of victory, the repayment of which was not demanded by the treaty, and the possible non-payment by Germany of all or part of the reparations debt which she was called upon to pay. He states frankly however: "Now, let us make no mistake about this. Stripped of its disguise of words and transformed into plain figures, the idea of financial unity, as regards the settlement of the cost

⁹ *The Making of the Reparation and Economic Sections of the Treaty*, pp. 53, 55, 71.

¹⁰ *Ibid.*, pp. 71-72.

¹¹ *The Truth about the Treaty*, Indianapolis, the Bobbs-Merrill Co., 1921, p. 336.

of the war, had but one meaning—an appeal to the American Treasury with a view to its acceptance of additional liability”.¹²

The details of two such plans are supplied by him as follows:

We studied a plan to lump the costs, whatever they might be, of the war in one sum, basing responsibility on the population and national wealth of each country. This scheme would have reduced France's war debt from 30.2 per cent to 11.4 per cent; that of Great Britain, 31.1 per cent to 20.2 per cent; that of Belgium, from 5.4 per cent to 1.7 per cent; that of Serbia from 4.6 per cent to 0.8 per cent. On the contrary it would have increased the United States obligations 29 per cent, that of Japan 6 per cent, that of Italy 6 per cent, that of Canada 1 per cent, that of the Union of South Africa 1.4 per cent, etc. This percentage increase represented in round numbers 250,000,000,000 francs for the United States, 65,000,000,000 for Japan, 9,000,000,000 for Canada, 12,000,000,000 for the Union of South Africa”.

“The simple statement of these figures”, he adds, “provoked absolute protest from those countries whose debts were to be so increased”. The same fate, he informs us, attended another scheme, “which was equally officially submitted to the Allied delegations and which used as a basis for the share in the war debts the war dead of the several countries, as compared with the total population of the Allies. . . . The adoption of this calculation would have reduced the debt of France by about 30,000,000,000 francs”. But, he again laments, in every case, “no matter what was the method applied to the solution of financial unity, those who were called upon to pay for the others or to pledge themselves for others affirmed the doctrine of financial autonomy so jealously safeguarded during the war”.¹³

Whenever American officials were approached on the subject of the cancellation of the Allied debts to the United States, the record shows that their answers have been uniformly and firmly in the negative, and that they have disavowed the insinuations of the Allies that the United States is responsible, on the principle of partnership or otherwise, for any nation's war debts other than its own.

Apropos of the attempted discussions of the subject at the Peace Conference, Mr. Rathbone, Assistant Secretary of the United States Treasury, on March 8, 1919, wrote to M. de Billy, the French High Commissioner at Washington, as follows:

I wish to clearly inform you that the Treasury Department of the United States, which, as you know, has absolute authority, conferred by Congress, in the matter of loans allowed by it to foreign governments, will not consent to any discussion, at the peace conference or elsewhere, of a plan or project having for object the liberation, the consolidation, or new division of the obligations of foreign governments held by the United States.¹⁴

¹² Tardieu, *The Truth about the Treaty*, p. 340.

¹³ Translation of an article appearing in *L'Illustration* of October 20, 1920, quoted in Senate Document, No. 86, 67th Cong., 2d sess. p. 264.

¹⁴ *Ibid.*, p. 264; Tardieu, *ibid.*, p. 341.

When the question of the conversion into the form of long term bonds of the demand and short-term obligations of the British and Allied Governments held by the United States Treasury was taken up in the latter part of 1919, the British Chancellor of the Exchequer took advantage of the opportunity again to bring up the subject of the cancellation of the debts to America. Mr. Rathbone, to whom this suggestion was made and who was then in Paris, replied on November 18, 1919 as follows:

The United States Treasury has in no wise changed the views it has expressed, or modified the position that it has taken in the past, and regards the several obligations of the various Allied Governments held by the Government of the United States as representing the debt of each to the United States. . . .

The United States Treasury has never accepted the principle that a payment by Great Britain on account of her indebtedness to the United States required the receipt by Great Britain of a similar account from the Allied Governments indebted to Great Britain. On the contrary, the United States Treasury has always taken the position that the question of the British debt to the United States was a question between these two Governments alone.¹⁵

In the course of the same negotiations, in February, 1920, the Chancellor of the Exchequer sent a message through the British Embassy in effect inviting the American Treasury to the consideration of a general cancellation of intergovernmental war debts. A reply to this message was sent under date of March 19, 1920 by the Honorable David F. Houston, then Secretary of the Treasury. Mr. Houston's letter not only declined to accept the invitation, but gave cogent reasons which apply with equal force to the arguments now raised in the British note of August 1, 1922. Mr. Houston's letter of March 19 will therefore be quoted *in extenso* as containing a full statement of the American Government's attitude on the subject:

As to the general cancellation of intergovernmental war debts suggested by you, you will, I am sure, desire that I present my views no less frankly than you have presented yours. Any proposal or movement of such character would, I am confident, serve no useful purpose. On the contrary, it would, I fear, mislead the people of the debtor countries as to the justice and efficacy of such a plan and arouse hopes, the disappointment of which could only have a harmful effect. I feel certain that neither the American people nor our Congress, whose action on such a question would be required, is prepared to look with favor upon such a proposal.

Apparently there are those who have been laboring for some time under the delusion that the inevitable consequences of war can be avoided. As far back as January a year ago, before it could possibly be foreseen whether any measures were necessary other than the adoption of sound economic policies, various schemes including that of a cancellation of intergovernmental war debts, were launched. Of course, I

¹⁵ Senate Document No. 86, 67th Cong., 2d sess., pp. 63 and 65.

recognize that a general cancellation of such debts would be of advantage to Great Britain and that it probably would not involve any losses on her part. As there are no obligations of the United States Government which would be cancelled under such a plan, the effect would be that in consideration of a cancellation by the United States Government of the obligations which it holds for advances made to the British Government and the other allied Governments the British Government would cancel its debts against France, Italy, Russia, and her other allies. Such a proposal does not involve mutual sacrifices on the part of the nations concerned. It simply involves a contribution mainly by the United States. The United States has shown its desire to assist Europe. Negotiations for funding the principal of the foreign obligations held by the United States Treasury and for postponing or funding the interest accruing during the reconstruction period are in progress. Since the armistice this Government has extended to foreign Governments financial assistance to the extent of approximately \$4,000,000,000. What this Government could do for the immediate relief of the debtor countries has been done. Their need now is for private credits. The indebtedness of the allied Governments to each other and to the United States is not a present burden upon the debtor Governments, since they are not paying interest or even, as far as I am aware, providing in their budgets or taxes for the payment of their principal or interest. At the present time the foreign obligations held by the Government of the United States do not constitute a practical obstacle to obtaining credits here, and I do not think that the European countries would obtain a dollar additional credit as a result of the cancellation of those obligations. The proposal does not touch matters out of which the present financial and economic difficulties of Europe chiefly grow. The relief from present ills, in so far as it can be obtained, is primarily within the control of the debtor Governments and peoples themselves. Most of the debtor Governments have not levied taxes sufficient to enable them to balance their budgets, nor have they taken any energetic and adequate measures to reduce their expenditures to meet their income. Too little progress has been made in disarmament. No appreciable progress has been made in deflating excessive issues of currency or in stabilizing the currencies at new levels, but in Continental Europe there has been a constant increase in note issues. Private initiative has not been restored. Unnecessary and unwise economic barriers still exist. Instead of setting trade and commerce free by appropriate steps there appear to be concerted efforts to obtain from the most needy discriminatory advantages and exclusive concessions. There is not yet apparent any disposition on the part of Europe to make a prompt and reasonable definite settlement of the reparation claims against Germany or to adopt policies which will set Germany and Austria free to make their necessary contribution to the economic rehabilitation of Europe.

After taking all the measures within their power one or more of the debtor Governments may ultimately consider it necessary or advantageous to make some general settlement of their indebtedness. In such a case they would, I presume, propose to all creditors, domestic and foreign, a general composition which would take into account advantages obtained by such debtor country under the treaty of peace. How the American people or the American Congress would view partici-

pation in such a composition I can not say. It is very clear to me, however, that a general cancellation of intergovernmental war debts, irrespective of the positions of the separate debtor Governments, is of no present advantage or necessity. A general cancellation as suggested would, while retaining the domestic obligations intact, throw upon the people of this country the exclusive burden of meeting the interest and of ultimately extinguishing the principal of our loans to the allied Governments. This nation has neither sought nor received substantial benefits from the war. On the other hand, the Allies, although having suffered greatly in loss of lives and property, have under the terms of the treaty of peace and otherwise, acquired very considerable accessions of territories, populations, economic and other advantages. It would therefore seem that if a full account were taken of these and of the whole situation, there would be no desire nor reason to call upon the Government of this country for further contributions.¹⁶

So far as known, no reply to the foregoing letter has been published, nor are Mr. Houston's reasons for declining to consider the proposal of the Chancellor of the Exchequer covered by the note sent on August 1, 1922 by the Acting British Secretary of State for Foreign Affairs to the debtor governments. In that note the Earl of Balfour makes a pretense to generosity in the offer of general cancellation which Secretary Houston's letter denies. In it also the British Government officially circulates a general assumption as to the effect of the inter-Allied indebtedness upon the economic situation in Europe which is not shared by the American Secretary of the Treasury.

The Treaty of Versailles went into effect on January 10, 1920, and almost immediately thereafter the British and French Governments began to discuss the question of giving fixity and definiteness to Germany's reparation obligations, which had already consumed so much time at the Peace Conference and which had been decided adversely for the reasons previously given. On August 5, 1920, we find the British Prime Minister writing to President Wilson in regard to these Franco-British discussions and proposing an "all around settlement of inter-Allied indebtedness". In view of what had already taken place at the Peace Conference, Mr. Lloyd George's letter to President Wilson of August 5, 1920 deserves quotation on this subject. He said:

The British and the French Governments have been discussing during the last four months the question of giving fixity and definiteness to Germany's reparation obligations. The British Government has stood steadily by the view that it was vital that Germany's liabilities should be fixed at a figure which it was within the reasonable capacity of Germany to pay, and that this figure should be fixed without delay, because the reconstruction of Central Europe could not begin nor could the Allies themselves raise money on the strength of Germany's obligation to pay them reparation until her liabilities had been exactly defined. After great difficulties with his own people, M. Millerand

¹⁶ *Congressional Record*, July 18, 1921, Vol. 61, Part 4, p. 3951.

found himself able to accept this view—but he pointed out that it was impossible for France to agree to accept nothing less than it was entitled to under the treaty, unless its debts to its allies and associates in the war were treated in the same way.

This declaration appeared to the British Government eminently fair. But after careful consideration they came to the conclusion that it was impossible to remit any part of what was owed to them by France except as part and parcel of all around settlement of interallied indebtedness. I need not go into the reasons which led to this conclusion, which must be clear to you. But the principal reason was that British public opinion would never support a one-sided arrangement at its sole expense, and that if such a one-sided arrangement were made it could not fail to estrange and eventually embitter the relations between the American and British people, with calamitous results to the future of the world.¹⁷

It will be observed that Mr. Lloyd George, keen to detect one-sidedness in the Millerand proposal as affecting Great Britain, apparently was unable to see any one-sidedness in his own proposal to President Wilson as it affected the United States. Not so, however, with President Wilson, for in October, 1920 he sent an answer to the British Prime Minister which ought to have set at rest once and for all the agitation of the subject. Mr. Wilson replied:

It is highly improbable that either the Congress or popular opinion in this country will ever permit a cancellation of any part of the debt of the British Government to the United States in order to induce the British Government to remit, in whole or in part, the debt to Great Britain of France or any other of the allied Governments or that it would consent to a cancellation or reduction in the debts of any of the allied Governments as an inducement toward a practical settlement of the reparation claims. As a matter of fact, such a settlement, in our judgment, would in itself increase the ultimate financial strength of the Allies.

You will recall that suggestions looking to the cancellation or exchange of the indebtedness of Great Britain to the United States were made to me when I was in Paris. Like suggestions were again made by the chancellor of the exchequer in the early part of the present year. The United States Government by its duly authorized representatives has promptly and clearly stated its unwillingness to accept such suggestions each time they have been made and has pointed out in detail the considerations which caused its decision. The view of the United States Government has not changed, and it is not prepared to consent to the remission of any part of the debt of Great Britain to the United States. Any arrangements the British Government may make with regard to the debt owed to it by France or by the other allied Governments should be made in the light of the position now and heretofore taken by the United States, and the United States in making any arrangements with other allied Governments regarding their indebtedness to the United States (and none are now contemplated beyond the funding of indebtedness and the postponement of the payment of interest)

¹⁷ Senate Document No. 86, 67th Cong., 2d sess., p. 83.

will do so with the confident expectation of the payment in due course of the debt owed the United States by Great Britain. It is felt that the funding of these demand obligations of the British Government will do more to strengthen the friendly relations between America and Great Britain than would any other course of dealing with the same.

The United States Government entirely agrees with the British Government that the fixing of Germany's reparation obligation is a cardinal necessity for the renewal of the economic life of Europe and would prove to be most helpful in the interests of peace throughout the world; however, it fails to perceive the logic in a suggestion in effect either that the United States shall pay part of Germany's reparation obligation or that it shall make a gratuity to the allied Governments to induce them to fix such obligation at an amount within Germany's capacity to pay. This Government has endeavored heretofore in a most friendly spirit to make it clear that it can not consent to connect the reparation question with that of intergovernmental indebtedness.¹⁸

It was in the light of the record above set forth that the Act of Congress of February 9, 1922 was adopted. Hearings were held by the Senate and House Committees before the bill was reported out favorably. Treasury officials were the chief witnesses and they produced voluminous records from the Treasury Department covering the discussions between the governments from the beginning. No voice was raised either in the Senate or in the House of Representatives in favor of the cancellation in whole or in part of the Allied indebtedness to the United States. The debate on the bill was directed principally to amendments to make sure that the Act would not place in the hands of the Executive, authority to transfer the German reparation debt to the United States by the acceptance of German bonds in exchange for Allied indebtedness,¹⁹ and to leave no loop-hole in the law under which the Executive might entertain suggestions for the cancellation of the Allied debt.

Immediately upon the publication of the Balfour note, Mr. Mellon, the present Secretary of the United States Treasury, issued a statement in which he quoted the following from a memorandum handed to the British Ambassador in June, 1920:

It has been at all times the view of the United States Treasury that questions regarding the indebtedness of the Government of the United Kingdom of Great Britain and Ireland to the United States Government and the funding of such indebtedness had no relation either to questions arising concerning the war loans of the United States and of the United Kingdom to other governments or to questions regarding the reparation payments of the Central Empires of Europe. These views

¹⁸ *Congressional Record*, July 18, 1921, Vol. 61, Part 4, pp. 3951-52.

¹⁹ See the agreement made with Belgium on June 16, 1919 by the British and French Premiers and President Wilson, in which they undertake to recommend to their respective governmental agencies the acceptance of German reparation bonds in satisfaction of the sums borrowed by Belgium from the Allied Governments, printed in the SUPPLEMENT to this JOURNAL, p. 190.

were expressed to the representatives of the British Treasury constantly during the period when the United States Government was making loans to the Government of the United Kingdom and since that time in Washington, in Paris and in London.

At the same time Mr. Mellon denied Lord Balfour's statement that the United States Government virtually insisted upon a guarantee by the British Government of amounts advanced to the other Allies. "Instead of insisting upon a guarantee or any transaction of that nature", says Secretary Mellon's statement, "the United States Government took the position that it would make advances to each government to cover the purchases made by that government and would not require any government to give obligations for advances made to cover the purchases of any other government. Thus the advances to the British Government, evidenced by its obligations, were made to cover its own purchases, and advances were made to the other Allies to cover their purchases".

From the foregoing it appears that the proposal that America should cancel the Allied debts owing to her originated before the policy with reference to the German reparation was adopted and that the reparation clauses were inserted in the treaty with the explicit knowledge that the United States was not disposed to consider the subject of the cancellation of the debts. The subsequent attempt to entangle the question of the revision of the German reparation clauses with the payment of the inter-Allied debt should be viewed in the light of those facts. If the Allies deliberately persisted in their impracticable reparation policy with the hope of later substituting American responsibility for German irresponsibility, President Wilson's categorical refusal to entertain Premier Lloyd George's subsequent proposal to that effect should have disillusioned them.

The so-called partnership arrangement between the Allied and Associated Powers in the matter of liability for the costs of the war is completely negatived, so far as the United States is concerned, by the terms of the laws which authorized the loans and by the repeated statements to the contrary of the Treasury officials who lent the money and were cognizant of the conditions of the respective loans. As between the principal Allies themselves, the existence of a series of separate debts owing from one to another makes it difficult to accept the thesis now advanced that these loans were considered as joint contributions to a common cause. If so, why the carrying of these separate interest-bearing accounts of each so-called partner instead of lumping the alleged partnership contributions in one common fund to be used for common purposes?

The economic effects of the outstanding inter-Allied debts may be open to question, but surely their cancellation ought to be considered only as a last resort. The persistent urging and agitation of that drastic course before other remedies for the economic situation suggested by the creditor government have been tried is, to say the least, premature and out of place.

It is worth while to note that two of the principal representatives of the United States on the Commission on Reparation of the Peace Conference have since expressed themselves in opposition to the proposal to cancel the Allied debts to the United States. These gentlemen are Mr. Bernard M. Baruch, Chairman of the United States War Industries Board during the war, and Mr. Norman H. Davis, American Commissioner of Finance during the war. Both spent months in Europe studying the reparation problem. When, later, Mr. Davis, as Under-Secretary of State, transmitted to President Wilson the request of the British Chancellor of the Exchequer for the consideration of the question of cancellation, he accompanied it with a brief memorandum containing the following comment:

Just as the people of Europe were misled into believing German reparations would supply the deficit in budgets, they are being misled into believing a cancellation of the external governmental debts will later solve their other difficulties. While the Allies have never bluntly so stated, their policy seems to be to make Germany indemnify them for having started the war and to make us indemnify them for not having entered the war sooner.²⁰

Mr. Baruch has deemed it appropriate to give public expression to his views in regard to the so-called Balfour note of August 1, 1922, in a letter addressed to Senator William E. Borah, under date of September 12, 1922, as follows:

That note is the presentation of the opinion of a certain school in England that contends that the German reparation can not be reduced unless all interallied indebtedness is canceled or reduced, and that the interallied indebtedness should be canceled on the ground that the war was a common cause, and that each country gave what it could in men and treasure.

The Balfour note listed among the claims that England had, and which it would reduce or cancel if America canceled the indebtedness of the Allies to her, a claim of £1,300,000,000 for German reparation.

If the purpose of the note was to secure America's coming in on the same basis as England it might have been well to have eliminated entirely England's claims against Germany, which are based almost entirely upon pensions and separation allowances, because America has put in no such claim.

The moving cause, as I understand it, for our not demanding a share of the German reparation was in order to permit the devastated countries—France, Belgium, Italy, and others—to have what the Germans could pay.

So far as the allied debts are concerned, there are several ways of looking at them.

There are those who say they should be canceled because they can not be paid, and there are those who, like Mr. Balfour, say they should be canceled because they were incurred in a common cause.

²⁰ Memorandum to the President, February 21, 1920, printed in Senate Document No. 86, 67th Cong. 2d sess., p. 77.

The first of these apparently considers the matter from a purely commercial standpoint. What do the advocates of cancellation mean when they say that the Allies can not pay? Do they mean that these countries can not pay all or that they can not pay a part? Surely all of the great countries who are now our debtors can pay something if given time. And I am sure that countries like England, if we insist, can and will pay all, no matter what the cost may be. From a business standpoint it is going to be exceedingly difficult to convince the American people, who, after all, are the final arbiters in this matter, that if Germany can pay \$10,000,000,000, which all thoughtful people think she can pay if given time and opportunity, the Allies can not pay the amounts due us. Money is not the only method of payment. It is through the exchange of things that nations will pay one another as most individuals pay one another. But the nations of the world can not make things with which to pay unless they get down to work.

Now, as to the Balfour point of view:

Whatever may be the opinions of others, including myself, on the subject, the American people, as a whole, decided that the war was not theirs until we entered it; and the international community of interest and purpose must be viewed as dating from our entrance into the war. Then we must consider what portion of our advances was truly for common objectives.

The records of the Allied Purchasing Commission and the Treasury Department will show for what the various sums of money borrowed by England or any other nation were spent. Whereas it might be convincingly contended that the money spent for purchase of munitions (because we had not enough soldiers ready to use them, and because England and the other Allies were able to use them to better advantage in the quicker winning of the war), could be called a contribution to a common cause, yet the same decision could not be arrived at regarding certain other important expenditures.

Surely money that was spent for things that went into the making of shipping which became a permanent part of the mercantile fleet of England, or money that was used for the purchase of such material as went for commercial purposes or to bolster exchange—in most instances this was to facilitate purchases in other countries—or to pay for loans or materials obtained previously to our entering the war, if there were such, can by no conceivable reasons be considered a contribution to a common cause, and therefore should not be canceled.

The same applies in instances where food was bought for England's civilian population, not for her soldiers, and was paid for by that population. It must be remembered that the English Government did not give but sold to its people the food bought in this country.

On the other hand, in practically every instance where purchases were made in England by us after we entered the war they were paid for in cash and not by means of a loan by England to America. Again, America paid England for ferrying our soldiers to Europe.

Surely the expenditures mentioned above should be considered a contribution by the English in a common cause and should be set off against any amount by which England proposes that her gross debt to us should be reduced.

If this subject is treated on the basis suggested in the Balfour note, equity and justice would demand that England, whose territory was

not devastated, should relinquish her claim against Germany for the benefit of the devastated countries. Then we could count as a contribution to a common cause that which was spent for munitions and for fighting purposes in this country by England. But England, besides paying the balance due on the loan, should repay us, as a contribution to the common cause, that which we spent in her country for munitions and for shipping.

I do not make these remarks in a spirit of narrow criticism. Nor am I unmindful of the great sacrifices that the English people made so nobly and unstintingly in the World War. But I do believe that those behind the Balfour note should give full consideration to all of the facts involved in the case, and not make it appear that the United States is ungenerous in her position. We were ready and willing to have gone to the bitter end despite what the cost might have been to us. We made no bargain then for our continuance in the struggle, and we want no one to set a value upon our contribution.

In my opinion, it is useless to consider either the German reparation or the readjustment of the interallied debts by themselves, because they are but two symptoms of a disease that lies deeper. These problems should be treated as a whole so as to leave all peoples in the various countries free to go back to work under conditions that will cause them to look forward with hope and not backward with hate.²¹

The adoption in the Act of February 9, 1922 of the prohibition against cancellation of Allied indebtedness to the United States will make it impossible for the debt commission created by the Act to consider proposals for cancellation. Any further appeals to the United States for cancellation must therefore be based upon the hope of having the Act of February 9 amended in that respect. A glance at the cost to the American taxpayer involved in such an amendment will show the improbability of the success of any agitation in favor of the amendment. The portion of the war loans raised in the United States which was applied to meet in part America's cost of the war is roughly one-half of the total loans, which aggregated in round numbers \$20,000,000,000, the other half having been loaned to the Allies. For the service of the loans the Victory Liberty Loan Act established a sinking fund on July 1, 1920 and the law permanently appropriates for each fiscal year until the debt is discharged an amount equal to the sum of "2½ per centum of the aggregate amount of such bonds and notes outstanding on July 1, 1920, less an amount equal to the par amount of any obligations of foreign Governments held by the United States on July 1, 1920," plus "the interest which would have been payable during the fiscal year for which the appropriation is made on the bonds and notes purchased, redeemed, or paid out of the sinking fund during such year or in previous years."²²

It will be noted that the indebtedness incurred by the United States to make the foreign loans is not cared for by the sinking fund, as Congress

²¹ *Congressional Record*, September 13, 1922, Vol. 62, No. 231, p. 13539.

²² 40 U. S. Statutes at Large, p. 1312.

contemplated that foreign repayments would provide for that part of the debt.²³

The Treasury Department calculates that the cumulative sinking fund will retire the funded war debt of the United States, less the amount representing the foreign obligations held by the United States on July 1, 1920, in about twenty-five years.²⁴ It has been further calculated that the amounts required to meet the sinking fund and interest charges on the half of the debt applied to American war expenses will average an aggregate payment of \$685,000,000 annually for a period of twenty-five years.²⁵ As the Act of February 9, 1922 places a limitation of a similar period of twenty-five years for the repayment of the foreign debt, and as the principal and interest charges are substantially the same in both cases, it will be seen that the cancellation of the Allied debts to America will involve the payment by American taxpayers of an additional \$685,000,000 annually for a period of twenty-five years. Concretely, that is the proposition with which any American administration will be faced which undertakes to bring about an amendment of the Act of February 9, 1922, so as to authorize the cancellation of the Allied indebtedness to the United States.

GEORGE A. FINCH.

²³ See Section 3 of the First Liberty Loan Act, April 24, 1917, 40 U. S. Statutes at Large, p. 35; Section 3, Second Liberty Loan Act, September 24, 1917, *ibid.*, p. 288; and Section 7, Victory Liberty Loan Act, *ibid.*, p. 1312.

²⁴ Annual Report of the Secretary of the Treasury, 1920, p. 114.

²⁵ A paper read at a dinner of the Council of Foreign Relations in New York City, February 8, 1921 by Dr. C. E. McGuire.

CURRENT NOTES

GERMAN WAR TRIALS

REPORT OF PROCEEDINGS BEFORE THE SUPREME COURT IN LEIPZIG¹

August 8, 1921

The Treaty of Peace with Germany contains the following provisions:—

ARTICLE 228

The German Government recognizes the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Germany or in the territory of her allies.

The German Government shall hand over to the Allied and Associated Powers, or to such one of them as shall so request, all persons accused of having committed an act in violation of the laws and customs of war, who are specified either by name or by the rank, office or employment which they held under the German authorities.

ARTICLE 229

Persons guilty of criminal acts against the nationals of one of the Allied and Associated Powers will be brought before the military tribunals of that Power.

Persons guilty of criminal acts against the nationals of more than one of the Allied and Associated Powers will be brought before military tribunals composed of members of the military tribunals of the Powers concerned.

In every case the accused will be entitled to name his own counsel.

ARTICLE 230

The German Government undertakes to furnish all documents and information of every kind, the production of which may be considered necessary to ensure the full knowledge of the incriminating acts, the discovery of offenders and the just appreciation of responsibility.

In accordance with Article 228, lists of accused persons were prepared by the principal Allied Governments, and a final list was compiled and presented to the German Government, on the 3rd February, 1920. This list contained a very large number of names, and amongst them were those of many of the principal military and naval leaders in Germany.

The German Government represented that if the Allied Powers insisted

¹ British Parliamentary Command Paper, No. 1450. For the texts of the decisions, see *Judicial Decisions*, *infra*, p. 674 *et seq.*

upon the surrender of the persons accused, grave political difficulties would ensue, which might seriously imperil the government's existence. By way of compromise, therefore, they proposed that the accused persons should be put upon trial before the Supreme Court of the Empire in Leipzig.

An Inter-Allied Commission, appointed to examine this proposal, reported that the offer of the German Government was compatible with the execution of Article 228 of the Treaty of Peace, and the Allied Governments accordingly decided that without taking any part in the trials, so as to leave full and complete responsibility with the German Government, they would leave to that Government the duty of proceeding with the prosecution and judgment upon the understanding that the Allies would thereafter consider the results of these prosecutions and whether the German Government were sincerely resolved to administer justice in good faith. If it should be shown that the procedure proposed by Germany did not result in just punishment being awarded to the guilty, the Allied Powers reserved in the most express manner the right of bringing the accused before their own tribunals. (See text of note, Appendix I).²

In pursuance of this decision, certain cases were selected for submission to the Supreme Court at Leipzig, and on the 7th May, 1920, an abridged list containing 45 names was handed to the German Government with a note communicating to them the decision of the Allied Governments and the conditions of their acquiescence in this proposal. To this list the British Government contributed the names of seven persons, who were charged with grave outrages against the laws of war. The names of these persons and short particulars of the outrages with which they were charged were as follows:

(1) COMMANDER HELMUT PATZIG, who was charged with having sunk, without warning, the British hospital ship *Llandovery Castle* and with having subsequently fired on and sunk the boats containing the survivors with the consequent loss of 234 lives.

(2) LIEUT.-COMMANDER KARL NEUMANN, who was charged with having torpedoed, without warning, the British hospital ship *Dover Castle*, when homeward bound from the eastern Mediterranean fully laden with sick and wounded with the loss of six lives.

(3) LIEUT.-COMMANDER WILHELM WERNER, who was charged with having sunk the British S. S. *Torrington*, and with having subsequently drowned the whole of the crew, with the exception of the master, by submerging while they were on the deck of the submarine.

(4) KARL HEYDEN, who was charged with ill-treating prisoners of war at the Friedrich der Grosse mine.

(5) CAPTAIN EMIL MÜLLER, who was charged with ill-treating prisoners of war at Flavy-le-Martel camp.

² Printed in SUPPLEMENT to this JOURNAL, p. 195.

(6) & (7) HEINRICH TRINKE and ROBERT NEUMANN, who were charged with ill-treating prisoners of war at the working camp at Pommerensdorf Chemical Works.

After receiving the abridged list of accused persons, the German Government represented to the Allied Governments that difficulties were being experienced in obtaining evidence against the persons accused by reason of the fact that much of the evidence and information necessary to secure conviction was in the possession of the Allied Governments. A general conference was accordingly held at Spa on the 9th July, 1920, at which it was arranged that the Allied Governments should collect and provide statements of the evidence against the persons whose names appeared in the abridged list and transmit them to the *Oberreichsanwalt* (Public Prosecutor) in Leipzig.

H. M. Government immediately put in hand the completion of the evidence against all the persons whom they had named, and, on the 26th October, 1920, a printed volume containing the evidence in the cases in which they were immediately concerned, was handed to the German Ambassador in London for transmission to the *Oberreichsanwalt* in Leipzig.

In due course the German Government intimated that they were in a position to proceed against four of the persons named by the British Government, namely:

Karl Heynen,
Captain Emil Müller,
Robert Neumann,
Lieut.-Commander Karl Neumann.

They explained, however, that they were not in a position to bring to justice Commander Patzig, who was stated, after official enquiries had been made by the sheriff at Rosenberg, to have an address in Danzig, but whose present whereabouts were unknown. Lieut.-Commander Werner could not be traced at all, and Trinke was resident in Poland. Warrants for the arrest of Patzig and Werner, on the charge of murder, and of Trinke had been issued but had not been executed, but their property had been sequestered.

At a later date (June, 1921) the German Government further intimated that as a result of the enquiries made into the case of Commander Patzig, they had decided to put upon trial two officers serving in the same submarine, Lieutenants Dithmar, an officer in the German Navy, and Boldt, a retired officer of the German Navy, who appeared to be implicated and responsible for a part in the outrage with which Patzig was charged.

The question how best to make available at the trial of the accused the evidence of the British witnesses was one which presented considerable difficulty.

Three of the cases to be tried involved the ill-treatment of prisoners of war at prison camps in Germany, and in these cases a conviction was only likely to be obtained if a large number of witnesses could be collected and pro-

duced at the trial to give evidence of a continuous course of ill-treatment by the person charged. The witnesses had long since been demobilized from the army and were dispersed to civilian employment all over the country.

In the remaining cases, the charges were torpedoing of hospital ships and a merchant ship, and the witnesses, who were mainly employed in the merchant service, were also widely dispersed at sea.

Tracing these witnesses through changing addresses and taking comprehensive statements, such as were suitable for production in a court of law, involved great labor and some delay. When the question arose of securing their testimony at the trial, it was found that it was not possible to secure the attendance in Leipzig of all the witnesses, and there was of course no means of compelling unwilling witnesses to attend the trials there.

Many further witnesses in the cases of Heynen, Müller and Neumann were traced and interviewed with a view to making the Crown's case as complete as possible, and as soon as the collection of the evidence had been completed, arrangements were made for the examination in London at as early a date as could be arranged of all the witnesses in those cases, who were unable or unwilling to proceed to Germany to give oral evidence at the trial.

After consultation with the representatives of the German Government, who visited London in February, 1921, for the purpose of conferring with the Attorney-General upon the procedure to be adopted in securing the evidence of the British witnesses the 26th April was fixed for the examination at Bow Street Police Court before the chief magistrate of all British witnesses, who were unable to attend the trials. The German Government and the accused German persons were legally represented and an opportunity was given to them of putting questions to the witnesses. The examination of witnesses was commenced on that date and continued on April 27th, 28th and 29th, fifteen witnesses being examined in the three prison camp cases. The depositions of these witnesses were at once transmitted to the Supreme Court in Leipzig and were available at the main trials of the accused.

PROCEDURE AT THE TRIALS

The cases were taken in the following order:—

Karl Heynen.

Captain Emil Müller.

Robert Neumann.

Lieut.-Commander Karl Neumann.

and the trials opened in Leipzig with the first of these cases on May 23rd. The court comprised seven judges under the presidency of Dr. Schmidt.

A British mission attended the trials and followed the proceedings throughout. It comprised the Solicitor General (Sir Ernest Pollock, K.B.E., K.C., M.P.), Sir William Ellis Hume-Williams, K.B.E., K.C., M.P., Mr. V. R. M. Gattie, C.B.E., Mr. R. W. Woods, C.B.E. (of the Department of H.M.

Procurator General). Mr. Claud Mullins, Barrister-at-Law, accompanied the mission as interpreter. Mr. J. B. Carson, of the British Embassy in Berlin, and Commander Chilcott, M.P., also attended the trials.

In accordance with the arrangement made between the Allies stated above, whereby they agreed not to intervene in the trials but to leave the full responsibility to the Germans, the mission took no part in the proceedings, and declined the offer of the German authorities to be joined as parties to the proceedings. The mission obtained, however, and asserted on many occasions, the right to communicate in court with the *Oberreichsanwalt*, through the representative of the German Ministry of Justice, for the purpose of calling his attention to any point, which appeared to have been overlooked or imperfectly brought to the attention of the court by the necessary translation of the evidence of the witnesses.

In accordance with the practice prevailing in Germany and other Continental countries, the witnesses were examined and the proceedings were for the most part conducted by the president. The *Oberreichsanwalt* (Dr. Ebermeyer), appeared on behalf of the German State. The accused persons were present and were represented by legal advisers, who, although entitled to question the witnesses, took a relatively small part in the proceedings, and confined themselves to addressing the court after the examination of the witnesses had been concluded.

The *Oberreichsanwalt* summed up the evidence in his address to the court and indicated which charges in his opinion had, and which had not, been proved and where he had come to the conclusion that the accused was guilty demanded the sentence which he considered proper. The court then considered its decision and in due course delivered orally its judgment and sentence. The judgment was subsequently reduced to writing in a more extended form and a translation of the full judgment in each case is attached hereto as an appendix.³

The evidence of the British witnesses was given through an interpreter.

At the trials of Heynen and Müller, and at the trial of Lieuts. Dithmar and Boldt, to which separate reference is made hereafter in connection with the charge against Commander Patzig, the interpreter was Dr. Peters, who is a professor of languages at Leipzig University and holds a degree of Aberdeen University. Dr. Peters' interpreting left nothing to be desired. It was entirely satisfactory, and with his assistance the witnesses were enabled to give their answers fully and clearly. Dr. Peters' engagements unfortunately prevented him from attending the trial of Robert Neumann and the interpreting in that case was less satisfactory, being done in a more perfunctory and less intelligent manner; but it cannot be said that its defects, such as they were, had any effect upon the sentence.

³ Printed herein, *infra*, pp. 674.

THE BRITISH CASES

KARL HEYDEN

Heyden was in charge of a working camp established at the Friedrich der Grosse mine at Herne, Westphalia. The complaint against him was that he consistently ill-treated British prisoners of war under his charge by knocking them about with the butt end of his rifle and with his fists. Complaints had been made to the higher German authorities while Heyden was in charge of the camp and in consequence of these complaints Heyden was removed and court-martialled by the German military authorities. He was found guilty of certain of the charges made against him and sentenced to 14 days' medium arrest, the execution of the sentence being suspended till the end of the war. On the 21st July, 1920, these proceedings were set aside pursuant to the laws of 18th December, 1919, and of 24th March, 1920, the statutes under which the Supreme Court had power to try the cases remitted to it, in order to enable proceedings to be commenced afresh. This case was selected as one of the test cases, because it seemed probable that if a German military court during the war had found Heyden guilty of the charges made against him, the Supreme Court in Leipzig could hardly fail to do the same.

In this case three English witnesses gave evidence at Bow Street and sixteen attended the trial in Leipzig. It appeared from their evidence that on the day following the arrival of the prisoners at the camp, there had been concerted resistance on their part to the order to change their clothing and descend the mine and work in it, because they considered that such work was helpful to Germany in carrying on the war against England, and also because the great majority of the men had no experience of working in a coal mine. In consequence of this disobedience, Heyden had ordered the guard to drive the prisoners to work, using the butt ends of their rifles and fists. This incident formed one of the charges against Heyden, but the court considered that in view of the orders given to him by his superiors to see that the work was done and of the insubordination on the part of the prisoners, Heyden was justified in using force to compel obedience to his orders, and he was accordingly acquitted on this charge.

Another charge related to a prisoner named Cross—now dead—who, according to some of the British witnesses had been rendered insane by treatment meted out to him by Heyden in the bath. The facts and conclusions of the court upon this charge are referred to in the judgment (Appendix II.).⁴ Two of the English witnesses stated that Cross' insanity was not due to the treatment he received in the bath, as to their knowledge he had shown signs of insanity some ten days previously. Asked by the President of the court how they knew he was insane they referred to certain habits of Cross, which were inconsistent with his having his reason and control.

A number of other charges of violence to individual prisoners were, how-

⁴ Printed, *infra*, p. 674.

ever, found to be proved against Heynen by the evidence of the English witnesses, which was held by the court to be trustworthy.

The President, in delivering sentence, observed:

One cannot help acknowledging that this is a case of extremely rough acts of brutality aggravated by the fact that these acts were perpetrated against defenceless prisoners against whom one should have acted in the most proper manner, if the good reputation of the German Army and the respect of the German nation as a nation of culture was to be upheld.

Heynen was ultimately sentenced to ten months imprisonment.

EMIL MÜLLER

Captain Emil Müller was in charge of the prisoners of war camp at Flavyle-Martel on the Western Front at the end of April and beginning of May, 1918. The camp had been used by the British as a clearing station, but was used as a working camp by the Germans during the rapid advance in March and April, 1918. While it was in the occupation of the Germans, the conditions of the camp were indescribably bad. Into sheds capable of accommodating at the utmost 450 men over 1,000 men were crowded. The sanitary and washing arrangements were so primitive as to be practically nonexistent. The provision of food and medical attention was wholly insufficient, and no parcels or letters reached the camp. In a very short time the men were starving, verminous, and in a filthy condition, with the inevitable consequence that dysentery appeared almost at once and men began to die with appalling rapidity. In spite of the terrible condition of the men, they were forced to engage in heavy work behind the lines at long distances from the camp, and practically no excuse of weakness or sickness was accepted as relieving them from work. Men in the last stages of dysentery were driven out to work and fell and died by the road.

The evidence in this case fell under two headings, that relating to the physical condition of the camp, and that relating to personal brutality committed by Müller.

Eight British witnesses gave evidence at Bow Street and nineteen in Leipzig.

There was a conflict between the evidence tendered by and on behalf of the accused and that of the British witnesses as to the date on which Captain Müller left the camp, but if the German records which were produced were correct, and it was not practicable to challenge them, it appeared that he left the camp on May 5th, 1918, and did not subsequently return to it. It was naturally impossible for the British witnesses, after so long a lapse of time, to state with convincing certainty whether particular incidents, to which they spoke, occurred before or after the 5th May, and after hearing evidence, which tended to exonerate Captain Müller from responsibility for the state of the camp, the court showed an inclination to discount evidence as to inci-

dents, and in particular, as to the very numerous deaths which may have occurred after the 5th May, although there could be no reasonable doubt that they were directly attributable to conditions, which had been brought into existence before that date.

After considering the records produced by the German military authorities on behalf of the accused, the court came to the conclusion that Captain Müller was not to be held responsible for the insanitary conditions of the camp to which the numerous deaths were directly attributable, inasmuch as reports from Müller to divisional headquarters were produced calling attention to its state and asking for assistance and supplies. It was stated that these appeals met with no response owing to the great strain put upon German Headquarters Staff by the rapid advance in March, 1918, to the fluid state of the front, the number of prisoners taken, the lack of supplies in Germany, and the general inability of the staff to meet the demands made upon it at this time. The court, therefore, came to the conclusion that Müller had done his best to improve the conditions of the camp, and that his failure to render them satisfactory was due not to his fault, but to the lack of assistance given to him by his superiors. He was, therefore, acquitted on this charge.

In considering Müller's responsibility for the general conditions of the camp upon the complete evidence given at the trial, it must be borne in mind that it was proved at the trial that Müller had taken over the camp from the English in the condition in which it was found later to be; that he had, while at Flavy-le-Martel, reported to his superiors that the camp was overcrowded and without facilities for washing; that water was short and the men were lousy; and that there was no supply of clothing available. He further reported that the condition of the prisoners was bad and rapidly becoming worse, and that they were unfit for hard work. He had asked for the camp to be improved, and for equipment to be sent to him, but without result, and he had, meantime, made such small improvements as were within his power. It was, moreover, proved that he had left the camp before the epidemic of dysentery had reached its height, and that only one or two deaths occurred before his departure.

While it may be doubted whether, even with the scant means at his disposal, Müller took all the measures, which it was his duty as commandant of the camp to take, in order to improve, so far as was in the circumstances possible, the insanitary state of the camp and to afford to the prisoners means for keeping themselves clean and for getting treatment when they were sick, yet it must be admitted that the main responsibility did not rest with him, but rather with those, who elected to crowd into a small and insanitary compound three times as many men as could properly be quartered there, and thereafter to keep them short of water, short of food, and entirely without change of clothing, while exacting from them work of the most arduous nature.

After hearing the British witnesses, however, the court came to the con-

clusion that a number of acts of personal violence were proved against Captain Müller and in particular, that he had been guilty of sending out to work men, whose physical condition rendered them wholly incapable of discharging it. This conduct was admitted to be contrary to the instructions of the Headquarters Staff and could not be justified. The court showed a tendency to attribute Captain Müller's conduct to his nervous state due partly to a heart affection, partly to his inexperience in dealing with prisoners of war, and partly to the great difficulties in which he found himself in a camp so ill-equipped to receive such a large number of men. After taking into account these circumstances, the court awarded sentence of six months imprisonment.

ROBERT NEUMANN

Neumann was charged with ill-treating prisoners of war at Pommerensdorf Chemical Works. The charge against him was closely connected with the charge against Trinke, his superior officer, and the case against him lost much of its significance, because the German Government were unable to secure the arrest of Trinke, with whom a greater degree of responsibility rested than with Neumann.

Three British witnesses gave evidence at Bow Street and twenty-five in Leipzig.

To some extent Neumann was able to shelter himself behind the defence that he acted under the orders of his superior officer, Trinke, but after hearing all the British witnesses the court came to the conclusion that he had, in a number of cases, exceeded his authority and had committed acts of violence upon his own initiative. For these offences he was sentenced to six months imprisonment. Four months, which he had spent in prison awaiting trial were, however, taken into account with the result that only two months remained to be served from the date on which the sentence was pronounced.

LIEUT.-COMMANDER KARL NEUMANN

This officer was in command of the submarine *U. 67*, which sank the hospital ship *Dover Castle* in the Mediterranean on the 26th May, 1917. The facts were admitted because the evidence was overwhelming.

Neumann had previously torpedoed a vessel named the *Elm Moor* and taken the master, Captain Williamson, on board the submarine. When the submarine returned to its base, Captain Williamson obtained from Neumann, under his own signature, a certificate as to his identity, and that the *Elm Moor* had been torpedoed as stated. Captain Williamson was available as a witness for the trial, and a photographic copy of the certificate was included in the volume of evidence sent to the German Government in October, 1920. The German authorities had announced that Neumann would rely on the defence that he acted under superior orders; but, after consultation with the Admiralty, it was decided to proceed with the case, because of the importance

which attached to it on the grounds hereinafter referred to, even though the result should be an acquittal on the legal plea.

The defence relied solely on the plea that in torpedoing and sinking the ship Commander Neumann was acting upon the direct order of his superiors. The order was produced in court and could not be challenged. The *Oberreichsanwalt* did not ask for a conviction and the court held that Lieut.-Commander Neumann could not be held criminally responsible for the act as he had in no way exceeded the orders which he had received.

In the course of the judgment the court laid it down that the punishment of a subordinate, who has acted in conformity with his orders, can only arise (1) if he has exceeded the order given to him, (2) he is aware that his superior's orders directed action, which involved a civil or military crime or misdemeanor. The court did not consider that either of these elements was present in this case and the accused was accordingly acquitted.

It is important in this case to record that the decision of the court was based solely on the question of obedience to superior orders. The actual legality of the orders was not discussed in the judgment of the court, which only considered the question whether the accused was aware that they were illegal. In his address to the court the *Oberreichsanwalt* expressly stated that there was no evidence that the *Dover Castle* was being used in any other way than as a hospital ship, and that he was personally persuaded, that she did not carry troops or ammunition or anything that it was not proper for a hospital ship to carry. He invited the court to deal with the case on this assumption. Whether the orders were themselves just or not, he added, did not much matter so far as the accused was concerned, provided he did not know them to be unjust.

This was the *ratio decidendi* of the court, and there can be little doubt that by German law the decision was correct.

The proceedings against Commander Neumann completed the trials of the four persons named by the British Government who were amenable to justice, but after the conclusion of the last trial, proceedings were taken by the German Government, at their own instance, against two officers—Lieutenants Dithmar and Boldt—who were serving under the command of Commander Patzig in the submarine *U. 86*, by which the hospital ship *Llandovery Castle* was sunk.

HOSPITAL SHIP "LLANDOVERY CASTLE"
COMMANDER HELMUT PATZIG
LIEUTENANTS DITHMAR AND BOLDT

As has been already stated, Patzig is said to be out of the jurisdiction of the German Government, and his whereabouts are not known. In the course of the enquiry into the charges made against him by the British Government, the German authorities examined a number of witnesses and amongst them

the two officers, Lieutenants Dithmar and Boldt, and the members of the crew of the submarine.

Lieutenants Dithmar and Boldt both refused to make any statement, excusing themselves from doing so by the assertion that they had pledged their word to Patzig to give no information as to the events, which happened in connection with the destruction of the hospital ship *Llandoverly Castle*.

In consequence, however, of the information obtained from the members of the crew, supported as it was by the statements of the British witnesses, which had already been furnished to the German Government, the German authorities came to the conclusion that Lieutenants Dithmar and Boldt were implicated in the destruction of this vessel and the subsequent firing on her boats, and that there was sufficient evidence to justify them in placing these officers upon their trial for murder. Both officers were accordingly placed under arrest and the case was referred to the Supreme Court in Leipzig for trial. The British Government was invited to arrange for the attendance of the British witnesses to give evidence at the trial, and although the British Government did not itself make the charge against these officers, it was considered that in view of the gravity of the offence with which they were charged, and of the deplorable nature of the outrage, every assistance should be given to the German Government in bringing to justice the persons responsible for the crime.

When notice was received of the date fixed for the trial, less than three weeks remained, in which to trace the witnesses and arrange for their attendance at Leipzig. Four of the most important witnesses were found to be either serving in ships at sea or living abroad. Of these two were intercepted in New York by wireless, one was on passage from the West Indies to England, and one was traced in Vancouver, British Columbia.

Special arrangements were made for the immediate return of these witnesses to England and all were able to attend the trial in Leipzig, though the witness from British Vancouver arrived only on the last day of the hearing, which was specially adjourned for his attendance.

One witness was examined at Bow Street and twelve witnesses gave evidence at the trial. After hearing these witnesses and the witnesses called by the German authorities themselves, who included a number of the members of the crew of the submarine, the court found that the *Llandoverly Castle* was a British hospital ship, that she was properly equipped and lighted, and was used solely for the purposes of a hospital ship and carried no combatants or munitions of war; that she was on her proper course; that she was followed by the submarine *U. 86* for several hours and when her lights were lit she was recognized as a hospital ship beyond any possibility of doubt; and that after fully considering the matter and discussing it with the members of his staff, Commander Helmut Patzig torpedoed the vessel without warning. The court further held that at least three boats got safely away from the ship with survivors in them; and that the boats were found and searched by the

submarine, whose commander professed to hold the belief and was attempting to prove that the vessel carried eight American flight officers; that failing to find in the boats any justification for torpedoing the ship, Commander Patzig with the approval and concurrence of Lieutenants Dithmar and Boldt (who with the Gunner Meissner—now dead—were alone on the deck of the submarine with the commander at the time), deliberately fired on the surviving boats and hit and destroyed two out of the three of them with the consequent loss of life of all the persons who were in them. Commander Patzig required and obtained from the officers, crew and prisoners in the submarine, a pledge to maintain silence as to the incident until the conclusion of the war, and he further concealed all traces of his act by omitting any reference to the incident from the log book and forwarding a falsified chart of the courses of the submarine to the German Admiralty.

The court recognized that Commander Patzig, the commander of the submarine, was primarily responsible for this outrage, but held that the plea of superior orders would not avail Lieutenants Dithmar and Boldt in such a case. While relieving them of responsibility for the torpedoing of the ship, the court found that they had taken part and concurred in the firing on the boats and that they could have prevented this action by refusing to pledge themselves to secrecy and declaring their intention of reporting the incident upon their return to port.

In his address to the court the *Oberreichsanwalt* expressed some doubt whether there was direct legal proof that the boats had been hit by the shells fired by the submarine and he asked the court to find that the officers had been guilty of attempted murder, and to award a sentence of four years imprisonment. The court, however, came to the conclusion that the inference that at least two boats had been hit was irresistible and they found as a fact that these two boats had been destroyed by the firing. There is, however, a degree of killing recognized by the German criminal law which is not known to the law of this country. It may be said to come between murder with deliberate intent and manslaughter by negligence without intent, and in the present case the court considered that the prisoners acted without adequate premeditation and they therefore held that they were guilty of the intermediate degree of killing and awarded four years imprisonment with, in the case of Lieutenant Dithmar, dismissal from the service, and of Lieutenant Boldt, who was a retired officer, deprivation of the right to wear uniform.

Commander Patzig did not appear at the trial to give evidence in defence of his brother officers and was severely criticised for his failure to do so.

SUMMARY

Out of the seven persons, whose names were placed by the British Government in the abridged list, four have now been tried with the following results:—

Name.	Result.	Sentence.
Karl Heynen.....	Convicted	10 months imprisonment.
Captain Emil Müller.....	Convicted	6 " "
Robert Neumann.....	Convicted	6 " "
Lieut.-Commander Karl Neumann.....	Acquitted	—

In addition, arising out of the case of the *Llandovery Castle*, but not named by the British Government:—

Name.	Result.	Sentence.
Lieut. Dithmar.....	Convicted	4 years imprisonment and dismissal from service in the German Navy.
Lieut. Boldt.....	Convicted	4 years imprisonment and deprivation of right to wear uniform as a retired officer.

In all of these cases the sentences were to imprisonment in a prison and not to confinement in a fortress. Official confirmation of the fact that the sentences are being served has been received.

A satisfactory feature of these trials has been the admirable way in which the British witnesses have given their evidence before the Supreme Court at Leipzig. They consistently displayed a remarkable degree of intelligence and impartiality, which appeared greatly to impress the President and other members of the court.

Translations of the judgments are appended.⁵

LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
STRAND, W.C. 2.
8th August, 1921.

EXPLANATORY MEMORANDUM RELATING TO THE WIESBADEN AGREEMENT OF OCTOBER 6, 1921, BETWEEN FRANCE AND GERMANY¹

October 26, 1921

In order to understand the arrangements proposed by the Wiesbaden agreement, it is necessary to bear in mind certain provisions of the Treaty of Versailles, the application of which is affected by it.

The treaty itself provides in the reparation chapter, Part VIII, and in some of its annexes, for the partial liquidation of Germany's reparation indebted-

⁵ Printed, *infra*, p. 674.

¹ British Parliamentary Paper, 1921, (Cmd. 1547).

ness by deliveries in kind. The important passages in this connection are paragraph 19 of Annex II and Annex IV, which together make extensive provision for the delivery, through the Reparation Commission, to the Allied and Associated Powers of machinery, equipment, tools, reconstruction material and, in general, all such material and labor as is necessary to enable any Allied Power to proceed with the restoration or development of its industrial or economic life.

Germany's obligation being stated in terms of gold and not in terms of commodities, provision has necessarily been made in all cases for crediting Germany, from time to time, with the fair value, as assessed by the Reparation Commission, of such deliveries. Moreover, since the proportions received by the respective Powers in kind need not necessarily correspond exactly with their respective shares in Germany's reparation payments, as determined by inter-Allied agreement, provision is further necessarily made in the treaty to render each Power accountable not only to Germany, but to the Reparation Commission, for the value of these deliveries. Thus, on the one hand, the treaty stipulates as between the Allies and Germany that the value of services under the annexes shall be credited towards the liquidation of Germany's general obligation, and the schedule of payments assigns the value of annex deliveries to the service of the bonds handed over by Germany as security for her debt. On the other hand, the treaty provides that for the purpose of equitable distribution as between the Allies, the value of Annex deliveries shall be reckoned in the same manner as cash payments effected in the year, and the schedule of payments stipulates that the value of the deliveries received by each Power shall, within one month of the date of delivery, be paid over to the Reparation Commission, either in cash or in current coupons.

Further, the treaty imposes upon the Reparation Commission not only the duty of fixing prices, but also of determining the capacity of Germany to deliver goods demanded by any of the Allies, and, by implication, of deciding between the competing demands which are made upon that capacity by the Allies themselves.

The Wiesbaden agreement provides for the delivery by a German company² to French *sinistrés* of "all plant and materials compatible with the productive capacity of Germany, her supply of raw materials and her domestic requirements," that is to say, of the articles and materials which can be demanded under Annex IV and paragraph 19 of Annex II, which are, by the terms of the agreement, in so far as France is concerned virtually sus-

² The arrangement under which a German private company is to be created to deal directly with the orders without the intervention of the French and German Governments is intended to obviate the delays which experience has shown to be inseparable from the employment of the present machinery. It does not appear to have any important bearing on the general financial situation, since the deliveries will clearly have to be financed by the German Government and will ultimately be paid for by means of a reparation credit in account with the German Government.

pending, the obligations of Germany to deliver to France under the other annexes remaining unaffected.

Any question as to the capacity of Germany to satisfy the requirement of France, and all questions of price, are to be settled by a commission of three members, one French and one German, and a third selected by common agreement or nominated by the Swiss President.

The aggregate value of the deliveries to be made under the agreement, and of the deliveries to be made under Annexes III, V and VI (hereafter, for the sake of brevity, called the "Annex deliveries") in the period expiring on the 1st May 1926 is fixed at a maximum of 7 milliard gold marks.

In regard to the Annex deliveries the agreement in no way modifies the treaty provisions under which Germany is credited and France debited forthwith with the value, but special provisions, which are financially the essential part of the agreement, are made for bringing to reparation account the value of the Agreement deliveries. These special provisions are designed to secure that Germany shall only be credited on reparation account at the time of delivery with a certain proportion of them, and that deliveries not thus accounted for, which may be called "excess deliveries," shall be liquidated over a period of years beginning at the earliest on 1st May 1926. The provisions themselves are somewhat intricate, comprising as they do, a series of interacting limitations, and they require some elucidation.

(1) In no case is credit to be given to Germany in any one year for Annex and Agreement deliveries together, to an amount exceeding one milliard gold marks.

(2) In no case is credit to be given to Germany in any one year for more than 45 per cent. of the value of the Agreement deliveries or for more than 35 per cent. if the value of the Agreement deliveries exceeds one milliard gold marks.

The effect of the above is to prescribe that 55 per cent. (or, if the agreement operates successfully, 65 per cent.) of the value of the Agreement deliveries *as a minimum* will be the object of deferred payment by instalments. If the Agreement deliveries reached really high figures, the operation of the milliard limitation would make the carry forward much more than 65 per cent.

The excess deliveries are to be liquidated with interest at 5 per cent. per annum in ten equal annual instalments as from 1st May 1926, subject to certain conditions:

(1) France shall in no case be debited in one year for Agreement deliveries with an amount which, when added to the value of her Annex deliveries in that year, would make her responsible for more than her share (52 per cent.) of the total reparation payments made by Germany in that year.

(2) Agreement deliveries continue after 1st May 1926, with the same provisions for deferred payment. If in any year between May 1926 and May 1936 the amount (not exceeding 35 or 45 per cent.) of the value of

that year's Agreement deliveries to be credited to Germany, together with the annual instalment to repay the debt incurred in respect of the period ending 1st May 1926, exceeds one milliard, the excess is to be carried forward from year to year until a year is reached in which no such excess is created by the payment. But in no case shall the amount credited, even if it is less than one milliard gold marks, exceed the limit laid down by the preceding condition.

(3) Any balance with which Germany has not been credited on 1st May 1936 is to be credited to her with compound interest at 5 per cent. in four half-yearly payments on 30th June and 31st December 1936 and 30th June and 31st December 1937. But, again, these half-yearly payments shall not be made if the effect of making them would be to exceed the limit laid down in condition (1) above.

(4) Agreement deliveries continue indefinitely after 1st May 1936, with power, however, to Germany to arrest them whenever the execution of them would result in France owing more than 52 per cent. of Germany's annual reparation payment in respect of Annex deliveries, deferred payments already matured, and the 35 or 45 per cent. of current deliveries.

From the above it is to be noted that, while there is a limitation for the first five years of the amount of Agreement deliveries which can be demanded, there is,

(1) No point at which the right of France to demand these special deliveries automatically terminates;

(2) No final limitation upon the value of the deliveries which can be demanded by France during the lifetime of the agreement;

(3) No definitely prescribed period within which France's debt to Germany and to the other partners in reparation shall be liquidated.

The financial effect of the agreement is perhaps best shown by taking hypothetical examples.

Let it be assumed that Germany's annual reparation obligation under the schedule of payments amounts to 3,300,000,000 gold marks, of which France, under existing inter-Allied agreements, is entitled to receive 52 per cent., or, 1,700,000,000 gold marks. Let it be assumed again that France receives annual Annex deliveries to the value of 450,000,000 gold marks. The Annex and Agreement deliveries together in the first five years are not to exceed 7,000,000,000 gold marks. Five years' Annex deliveries, on the above hypothesis, amount to 2,250,000,000 gold marks, leaving a maximum value of 4,750,000,000 gold marks for the Agreement deliveries over the same period. Let it be assumed that the Agreement deliveries are spread equally over the five-year period, with the result that their annual value amounts to 950,000,000 gold marks. In the first year, 1921-22, it is specially provided that not more than 35 per cent. shall be credited to Germany, or 332,500,000 gold marks, leaving payment to be deferred of 617,500,000 gold marks. In the second and subsequent years, up to May 1926, 45 per cent. of the 950,000,000 gold marks, or 427,500,000 gold marks, would be credited, leaving

522,500,000 gold marks to be deferred. At the end of the period, therefore, France would owe a total of 2,707,500,000 gold marks, together with simple interest at the rate of 5 per cent. per annum.

Leaving out of account the complication of interest, France is to liquidate this debt in ten equal annual instalments of 270,750,000 gold marks, subject to certain conditions, and the effect of these conditions must be stated with the aid of further hypothetical figures. Let it be assumed that the amount of Germany's annual reparation obligation and the amount of France's Annex deliveries remain constant, and let it further be assumed that France continues to call for Agreement deliveries to the value of 500,000,000 gold marks a year. France will then be debited for the year 1926-27 with 450,000,000 gold marks for Annex deliveries, 270,750,000 gold marks for the earlier Agreement deliveries, and 225,000,000 gold marks, being 45 per cent. of the current year's Agreement deliveries, making in all a total of 945,750,000 gold marks. She will have paid off 270,750,000 gold marks, but have incurred a fresh debt of 275,000,000 gold marks. She will then owe 4,250,000 gold marks more on the 1st May 1927 than she owed on the 1st May 1926. This process might continue until 1st May 1936.

Should the Agreement deliveries continue on a higher scale, France's debt would be more heavily increased in proportion. Let it be assumed, for example, that the Agreement deliveries in the year in question amounted to a value of 900,000,000 gold marks. France cannot be called upon to pay more in a year than one milliard. She will have to pay in respect of Annex deliveries and previous Agreement deliveries a total of 720,750,000 gold marks. It follows, therefore, that not more than 279,250,000 gold marks out of 900,000,000 gold marks, which represent the hypothetical value of that year's Agreement deliveries, will be paid for, leaving a total of 620,750,000 gold marks to carry forward, and an increase in France's debt of 350,000,000 gold marks.

The results might be indefinitely varied by choosing different figures for any one of the factors which enters into the problem. It is perhaps unnecessary, however, for the sake of seeing the effect of the agreement, to vary the above hypotheses in more than one respect. It is desirable to consider the effect on the above calculations of a decrease whether by reason of an actual German default or through a postponement regularly accorded by the Reparation Commission under Article 234 of the treaty, in the amount effectively paid by Germany on reparation account in any one year.

Let it be assumed, for instance, that Germany pays on reparation account in the year 1922-23 only 1,000,000,000 gold marks, of which France is entitled to 520,000,000 gold marks. She cannot be debited in that year with more than 520,000,000 gold marks, and she is automatically debited to the extent of 450,000,000 gold marks for Annex deliveries. Credit will therefore be given to Germany for no more than 70,000,000 gold marks in respect of Agreement deliveries, leaving a deferred payment of no less than 880,000,000

gold marks effectively paid to France by Germany and not available for distribution among the other Allies before, at the earliest, 1926-27. A continued failure by Germany to pay on account of reparation the amount contemplated at the beginning of these calculations would proportionately increase the amount deferred and therefore the size of the ten annual instalments which, subject always to the conditions indicated above, begin to be credited to Germany after 1st May 1926. Continued failure on Germany's part after May 1926, combined with the continued operation of the Agreement deliveries, would result in a more and more rapid accumulation of French indebtedness in the subsequent period for which no means of liquidation is provided.

It remains necessary to draw attention to one subsidiary point of a financial character under the schedule of payments. Part of Germany's annual reparation liability consists of the payment of 26 per cent. of the value of German exports in each period of twelve months, and part of the security for the payment consists of the proceeds of a levy of 25 per cent. on the value of all German exports. The French Government has undertaken to support a request, to be submitted by the German Government to the Reparation Commission, for the inclusion in the exports which form the basis of these calculations of that part only of the value of the deliveries made under the agreement which is credited to Germany and debited to France during any particular year.

If it can be assumed that any part of the special deliveries to be made under the agreement would, in the absence of the agreement, have been diverted to Germany's ordinary external trade, then the concession desired will have the effect of diminishing the annual payments made by Germany for the benefit of the Allies as a whole.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD MAY 16—AUGUST 15, 1922

(With references to earlier events not previously noted.)

WITH REFERENCES

Abbreviations: *Adv. of peace*, Advocate of peace; *B. I. I. I.*, Bulletin de l'Institut Intermediaire International; *Bd. of Trade J.*, Board of Trade Journal (London); *Bundesbl.*, Switzerland, Bundesblatt; *Chunet*, Journal du droit international; *Cmd.*, Great Britain, Parliamentary papers; *Commerce Reports*, U. S. Commerce reports; *Cong. Rec.*, Congressional Record; *Contemp. R.*, Contemporary Review; *Costa Rica, Ga.*, La Gaceta; *Cuba. B. O. Sec. de Estado*, Boletin Oficial de la Secretaria de Estado; *Cur. Hist.*, Current History (New York Times); *D.G.*, Diario do Governo (Portugal); *D.O.*, Diario oficial (Brazil); *Deutsch. Reichs.*, Deutscher Reichsanzeiger; *E. G.*, Eidgenossische gesetsblatt (Switzerland); *Edin. Rev.*, Edinburgh Review; *Europe*, L'Europe Nouvelle; *Evening Star* (Washington); *Figaro*, Le Figaro (Paris); *G. B. Treaty series*, Great Britain, Treaty series; *Ga. de Madrid*, Gaceta de Madrid; *G. U.*, Gazzetta Ufficiale (Italy); *Guatemalleco*, El Guatemalteco; *I. L. O. B.*, International Labor Office Bulletin; *J. O.*, Journal officiel (France); *L. N. M. S.*, League of Nations, Monthly Summary; *L. N. O. J.*, League of Nations, Official Journal; *L. N. T. S.*, League of Nations, Treaty series; *Lond. Ga.*, London Gazette; *Monit.*, Moniteur Belge; *Nation* (N. Y.); *N. Y. Times*, New York Times; *Naval Inst. Proc.*, U. S. Naval Institute Proceedings; *P. A. U.*, Pan American Union Bulletin; *Press Notice*, U. S. State Dept. Press Notice; *Proclamation*, U. S. State Dept. Proclamation; *R. G. D. I. P.*, Revue Générale de Droit International Public; *Reichs G.*, Reichs-Gesetsblatt (Germany); *Rev. int. de la Croix-Rouge*, Revue internationale de la Croix-Rouge; *Staats*, Netherlands Staatsblad; *Staatscourant*, Nederlandsche Staatscourant; *Temps*, Le Temps (Paris); *Times*, The Times (London); *Wash. Post*, Washington Post.

July, 1921

- 21 BELGIUM—NETHERLANDS. Workmen's compensation convention, signed at The Hague, Feb. 9, 1921, promulgated in Belgium. Text: *Monit.*, May 28, 1922, p. 3982.

November, 1921

- 12 BELGIUM—GERMANY. Ratifications exchanged of the agreement concerning art. 312 of Versailles treaty, signed at Aix-la-Chapelle, July 9, 1920. *Reichs G.*, 1922, teil 2, p. 73.

February, 1922

- 22 BELGIUM—FRANCE. Convention concerning reparation regulations signed Oct. 25, 1921, promulgated in Belgium. Text: *Monit.*, July 13, 1922, p. 4958.

April, 1922

- 1 FRANCE—SWITZERLAND. Telephone tax agreement, signed Jan. 18-24, 1922, came into force. *E. G.*, May 10, 1922, p. 361.

April, 1922

- 4 BELGIUM—EGYPT. Protocol signed Aug. 10, 1921, modifying commercial convention of June 24, 1891, promulgated by Belgium. *Monit.*, Aug. 6, 1922, p. 5608.
- 6 AUSTRIA—UNITED STATES. President Harding signed S. J. Res. 160 relating to deferment of certain liens held by the United States against Austria. *Cong. Rec.*, Apr. 1, 1922, p. 5598.
- 8 CHINA. President of Chinese Republic issued mandate creating the "Washington Conference Commission" to assist in carrying into effect the various resolutions and instruments enacted at Washington conference. *Press notice*, June 20, 1922.
- 12 CHILE—GREAT BRITAIN. Denunciation of various slave traffic conventions became effective. *Lond. Ga.*, July 28, 1922, p. 5592.
- 13 AUSTRIA—GERMANY. Ratifications exchanged of the treaty signed at Berlin, Aug. 17, 1921, concerning the affairs of war injured and survivors. *Reichs G.*, 1922, teil 2, p. 76.
- 17 ITALY—SWITZERLAND. St. Gothard railroad convention, signed at Berne, Sept. 24, 1921, promulgated in Italy. Text: *G. U.*, May 30, 1922, p. 1265.
- 18 SPAIN—SWITZERLAND. Customs tariff convention concluded. Text of attached schedules: *Bd. of Trade J.*, May 11, 1922, p. 515.
- 25 ARGENTINA—CHILE. Convention signed at Santiago, providing transandine connections between the two countries. *P. A. U.*, August, 1922, p. 189.
- 25 GERMANY—SWITZERLAND. Ratifications of arbitration treaty of Dec. 3, 1921 exchanged at Berne. *Reichs G.*, 1922, teil 2, p. 104.
- 25 GREAT BRITAIN—NORWAY. Denunciation became effective of slave trade treaty of Nov. 6, 1824 and additional article of June 15, 1835. *Lond. Ga.*, June 13, 1922, p. 4466.
- 27-29 GREAT BRITAIN—UNITED STATES. African slave trade treaty, signed at Washington, Apr. 7, 1862, additional articles of Feb. 16, 1863 and June 3, 1870, denounced by Gt. Britain on Apr. 27, and accepted by United States on Apr. 29. *Lond. Ga.*, June 27, 1922, p. 4814.
- 28 BRAZIL—PERU. Extradition treaty signed Feb. 13, 1919, ratified by Peru. *P. A. U.*, Sept., 1922, p. 301.
- 29 DOMINICAN REPUBLIC—SPAIN. Parcel post convention, signed by Spain on Nov. 17, 1921 and by Dominican Republic, Apr. 17, 1922, ratified by Dominican Republic. *P. A. U.*, August, 1922, p. 190.

May, 1922

- 1 BELGIUM—GREAT BRITAIN. Reciprocal agreement concerning maritime inspection, promulgated in Belgium. *Monit.*, June 4, 1922, p. 4159.

May, 1922

- 1 BELGIUM—JAPAN. Reciprocal agreement concerning maritime inspection promulgated in Belgium. *Monit.*, June 12-13, 1922, p. 4275.
- 1 DENMARK—GREAT BRITAIN. Convention signed in London renewing for five years the arbitration convention of Oct. 25, 1905. *G. B. Treaty ser.*, no. 12, 1922. *Cmd.* 1744.
- 1 SWEDEN—UNITED STATES. Parcel post convention, signed at Washington, Apr. 17, 1922 and Stockholm, Mar. 24, 1922, ratified by the United States. *Month. catalogue U. S. pub. doc.*, June 1922, p. 777.
- 4 GREAT BRITAIN—SWEDEN. Denunciation became effective of slave trade treaty of Nov. 6, 1824 and additional article of June 15, 1835. *Lond. Ga.*, June 13, 1922, p. 4466.
- 6 GREAT BRITAIN—LITHUANIA. Arrangement for commercial reciprocity concluded by exchange of notes. Text of notes: *Bd. of Trade J.*, June 8, 1922, p. 638. *G. B. Treaty ser.*, 1922, no. 9.
- 8 GERMANY—UNITED STATES. Patent convention of Feb. 23, 1909 again came into force in accordance with provisions of peace treaty of Aug. 25, 1921. *Reichs G.*, 1922, teil 2, p. 132.
- 9 GREAT BRITAIN—NETHERLANDS. Denunciation became effective of slave trade treaty of May 4, 1818, additional articles of Dec. 31, 1822, Jan. 25, 1823, Feb. 7, 1837 and Aug. 31, 1848. *Lond. Ga.*, June 13, 1922, p. 4467.
- 11 GREAT BRITAIN—ITALY. Agreement respecting graves of British soldiers in Italy signed at Rome. Text: *G. B. Treaty ser.*, 1922, no. 8.
- 12 ITALY—POLAND. Commercial convention signed at Genoa amplifying that of Aug. 23, 1921. Summary: *Bd. of Trade J.*, July 27, 1922, p. 99; *Commerce repts.*, Aug. 14, 1922, p. 480.
- 12 LEAGUE OF NATIONS. COUNCIL. Passed resolution at its 18th session requesting Permanent Court of International Justice to give advisory opinions relating (1) to nomination of Netherlands Delegate to Third International Labor Conference (2) to competence of International Labor Office in agricultural questions. *L. N. O. J.*, June, 1922, p. 527.
- 14(?) FRANCE—POLAND. Four conventions, political, commercial, petroleum and private property, ratified by Polish Diet. *Temps*, May 15, 1922, p. 2.
- 15 SPAIN—SWITZERLAND. Commercial convention concluded at Berne. Text: *Ga. de Madrid*, May 17, 1922, p. 634.
- 16 FRANCE—POLAND. Convention, signed at Warsaw, Oct. 14, 1920, relative to social aid and care, ratified by France. *J. O.*, May 17, 1922, p. 5078.

May, 1922

- 18 GERMANY—UNITED STATES. Law promulgated in Germany granting same copyright protection to American authors as that given to Germans. *Reichs G.*, 1922, teil 2, p. 129; *Wash. Post*, May 19, 1922, p. 6.
- 19 COSTA RICA—GREAT BRITAIN. Treaty of Jan. 12, 1922 for arbitration of dispute between Central Costa Rican Petroleum Company and the Royal Bank of Canada, ratified by Costa Rica. Text: *La Gaceta (Costa Rica)* May 25, 1922, p. 565.
- 19 GENOA CONFERENCE. On May 16, Russia agreed to participate in Hague conference. *Wash. Post*, May 16, 1922, p. 1. On May 17, project for conference adopted. *N. Y. Times*, May 18, 1922, p. 1. On May 18 agreement for a temporary pact of non-aggression was adopted. Summary: *Wash. Post*, May 19, 1922, p. 3. On May 19, Conference adjourned. *Times*, May 20, 1922, p. 9; *Wash. Post*, May 20, 1922, p. 1.
- 19 to July 20. HAGUE CONFERENCE ON RUSSIAN AFFAIRS. Final resolution of Genoa conference of May 19, 1922 provided for convening conference on June 26, with preliminary sessions beginning June 15. *Cur. Hist.*, August, 1922, v. 16: 868. On June 1 Poincaré sent memorandum to the powers invited to the Conference, stating position of France with regard to Russia. France and Italy exchanged views on June 8. *Wash. Post*, June 9, 1922, p. 4. Great Britain replied on June 11. France replied to British memorandum on June 12, and issued communiqué on June 13. Texts: *Europe*, June 17, 1922, p. 754. On June 15 the preliminary Conference opened in the Peace Palace, with 29 nations represented. On June 26, first joint meeting with Russian delegation was held. On July 20, the Conference closed, after hearing reports of various commissions. Announcement made that United States would not support any citizen who attempted to acquire property in Russia belonging to citizens of another state. *Cur. Hist.*, August, 1922, v. 16: 868; *Times*, July 21, 1922, p. 9.
- 20 ITALY—SERB, CROAT, SLOVENE STATE. Agreement signed at Genoa fixing status of Adriatic seaports of Zara and Fiume. *N. Y. Times*, May 20, 1922, p. 4; *Times*, May 24, 1922, p. 9.
- 21-22 BOLIVIA—CHILE—PERU. Identical notes, demanding seat in Conference addressed by Bolivia to heads of Chilean and Peruvian delegations at Tacna-Arica conference in Washington, made public on May 21. Text: *Wash. Post*, May 22, 1922, p. 5. On May 22, both Chile and Peru declined to consider demand. *Wash. Post*, May 23, 1922, p. 3.

May, 1922

- 24 to June 10. BANKERS' CONFERENCE. International Committee of Bankers met in Paris on May 24 to consider loan to Germany. After exchange of notes of May 24 and 26, June 2 and 8, with the Reparation Commission, the Committee decided not to recommend a loan, issued a report and adjourned on June 10. Texts of notes: *Europe*, June 10, 1922, p. 725; *Cur. Hist.*, August, 1922, v. 16: 856, 892. Text of report: *Europe*, June 24, 1922, p. 787.
- 24 ITALY—SOVIET RUSSIA. Commercial treaty signed at Genoa for execution of provisions of agreement signed at Rome, Dec. 26, 1921. *Wash. Post*, May 25, 1922, p. 1. Text: *Europe*, July 1, 1922, p. 823.
- 24-30 GERMANY—POLAND. Economic treaty of May 15, 1922 settling Upper Silesian question ratified by Poland on May 24. *Temps*, May 26, 1922, p. 2. Ratified by Germany on May 30. *N. Y. Times*, May 31, 1922, p. 9.
- 25 AUSTRIA—UNITED STATES. President Harding issued proclamation declaring citizens of Austria entitled to benefit of Copyright act of Dec. 18, 1919. Text: *Proclamation* no. 1629.
- 25 GERMANY—UNITED STATES. President Harding issued proclamation declaring citizens of Germany entitled to benefit of Copyright act of Dec. 18, 1919. Text: *Proclamation* no. 1628.
- 25 NEW ZEALAND—UNITED STATES. President Harding issued proclamation declaring citizens of New Zealand entitled to benefit of Copyright act of Dec. 18, 1919. *Proclamation* no. 1630.
- 26 NOBEL PEACE PRIZE. Announced that Nobel Prize Committee proposed to introduce in Riksdag a bill of provisional discontinuance of peace award. *Cur. Hist.*, July, 1922, v. 16: 695.
- 26 to June 4. FRANCE—SPAIN. By exchange of notes, passport visés are no longer required for nationals. *Ga. de Madrid*, June 9, 1922, p. 908.
- 27 FRANCE—GREAT BRITAIN. Protocol of Aug. 6, 1914, modifying convention of Oct. 20, 1906 relating to New Hebrides, promulgated in France. *J. O.*, June 4, 1922, p. 5840.
- 29 to Aug. 6. GERMAN REPARATIONS. Reply of German Chancellor accepting main demands in Reparation Commission notes of Mar. 21 was delivered in Paris on May 29. Formal decision of Reparation Commission to grant moratorium for 1922 was dispatched in note on May 31. *Cur. Hist.*, July, 1922, v. 16: 658. Texts: *Times*, May 31 and June 2, 1922, p. 9, 7; *Europe*, June 10, 1922, p. 724. On July 2, agreement for deliveries in kind was signed at Paris by Bemelman and Cuntze. On June 14, the Reparation Commission sent letter to Germany regarding points not elucidated in Chancellor's letter of May 28. Texts: *Europe*, May 24, 1922, p. 790. On

May, 1922

June 17, the Reparation Commission approved agreement of June 2, 1922. *Temps*, June 18, 1922, p. 1. On June 28, Reparation Commission approved Franco-German complementary agreement for payments in kind, modifying agreement of Mar. 15, 1922. *Temps*, June 29, 1922, p. 6. On July 12, Germany laid demand for moratorium before Reparation Commission. Text: *Temps*, July 14, 1922, p. 2; *Europe*, Aug. 10, 1922, p. 1006. Commission replied on July 14. Text: *Temps*, July 15-16, 1922, p. 1. On July 14, Germany asked delay of 3 years in liquidating claims of French nationals against German nationals. On July 17, Germany notified Commission that July 15 payment had been made. *N. Y. Times*, July 18, 1922, p. 1. On July 22, Reparation Commission issued memorandum dated July 18 on supervision of German finances. *Temps*, July 23, 1922, p. 6. On July 26, Poincaré replied to German demands. Text: *Temps*, Aug. 2, 1922, p. 1. On Aug. 1, Poincaré replied to note of same date from German Chargé d'Affaires. Text: *Europe*, Aug. 10, 1922, p. 1010. On Aug. 5, Germany's reply to French notes of July 26 and Aug. 1 was received. Text: *Temps*, Aug. 6, 1922, p. 4. On Aug. 6, German Chargé d'Affaires replied to Poincaré note of Aug. 1. *Europe*, Aug. 10, 1922, p. 1011.

- 30 AUSTRIA—CZECHOSLOVAK REPUBLIC. Ratifications exchanged at Prague of treaty signed Mar. 10, 1921, dealing with frontier questions. *L. N. M. S.*, June, 1922, p. 117.
- 30 GREAT BRITAIN—HAITI. Denunciation became effective of slave trade convention, signed at Port-au-Prince Dec. 23, 1839. *Times*, July 17, 1922, p. 9; *Lond. Ga.*, July 14, 1922, p. 5271.
- 31 BRAZIL—PERU. Extradition treaty signed Feb. 13, 1919, ratified by Brazil. *P. A. U.*, Sept. 1922, p. 301.
- 31 INTERNATIONAL PARLIAMENTARY TRADE CONFERENCE. Held at the Sorbonne. *Temps*, June 1, 1922, p. 4; *Times*, June 1, 1922, p. 10.

June, 1922

- 1 BELGIUM—UNITED STATES. Reciprocity agreement concerning maritime inspection promulgated in Belgium. *Monit.*, July 30, 1922, p. 5398.
- 1 SOVIET RUSSIA—SWEDEN. Both Chambers of Swedish Riksdag rejected ratification of commercial convention, signed Mar. 1, 1922. *Times*, June 2, 1922, p. 8.
- 1-3 HAITI—UNITED STATES. By exchange of notes, modifications in protocol of Oct. 3, 1919, providing for flotation of a loan, were agreed upon. Text of modifications: *Press notice*, Sept. 12, 1922.

June, 1922

- 2 CHINA—JAPAN. Ratifications of Shantung treaty exchanged at Peking. *Wash. Post*, June 3, 1922, p. 9; *N. Y. Times*, June 3, 1922, p. 3.
- 2 GERMANY—REPARATION COMMISSION. Agreement signed at Paris concerning ways and means of carrying out deliveries of goods by Germany in accordance with annexes 2 and 4 of Part VIII of Versailles treaty. Text: *Deutsch. Reichs.*, July 20, 1922, p. 2.
- 2 to Aug. 7. MEXICAN DEBTS. International Conference on Mexican national debt opened in New York on June 2. *Wash. Post*, June 3, 1922, p. 11. On June 16 agreement for adjustment of debt questions signed by Señor de la Huerta and Thomas W. Lamont. Summary: *Wash. Post*, June 17, 1922, p. 3; *Cur. Hist.*, Aug., 1922, v. 16: 911. Agreement signed by President Obregon, Aug. 7, 1922. *Cur. Hist.*, Sept., 1922, v. 16: 1011, 1095.
- 3 FRANCE—GERMANY. Treaty signed at Paris, supplementing that of Mar. 15, 1922, concerning reparations. Text: *Deutsch. Reichs.*, July 20, 1922, p. 4.
- 3 HUNGARY—UNITED STATES. President Harding issued proclamation extending all benefits of copyright act of Dec. 18, 1919, to citizens of Hungary. *Proclamation* no. 1632.
- 3 ITALY—UNITED STATES. President Harding issued proclamation extending all benefits of copyright act of Dec. 18, 1919 to subjects of Italy. *Proclamation*, no. 1630.
- 4 RUSSIAN AMBASSADOR. Correspondence made public between Bakhmeteff and the United States Department of State. Text of letters: *Wash. Post*, June 5, 1922, p. 1.
- 5 ARGENTINA—URUGUAY. Additional protocol to the penal law treaty, signed at Montevideo, Jan. 23, 1889, approved by Uruguay. *D. O. (Uruguay)*, July 3, 1922, p. 9.
- 5 CZECHOSLOVAK REPUBLIC—SOVIET RUSSIA. Provisional economic treaty signed at Prague. Text: *Ga. de Prague*, July 12, 1922, p. 1; *Europe*, July 1, 1922, p. 821.
- 5 CZECHOSLOVAK REPUBLIC—UKRAINIA. Provisional economic treaty signed at Prague. Text: *Ga. de Prague*, July 12, 1922, p. 1.
- 5 RHINE ARMY OF OCCUPATION. Following appeal by Allies and Germany, Secretary Weeks announced that about 1000 American troops would remain in Germany after July 1. *N. Y. Times*, June 6, 1922, p. 21.
- 7 DENMARK—GERMANY. Ratifications exchanged of agreement for regulation of questions in connection with transfer of sovereignty of North Slesvig to Denmark. *Temps*, June 9, 1922, p. 1.

June, 1922

- 9 ARGENTINA—URUGUAY. Aerial navigation treaty, signed at Buenos Aires, May 18, 1922, ratified by Uruguay. Text: *D. O. (Uruguay)*, June 24, 1922, p. 517.
- 9 SPAIN—URUGUAY. General arbitration treaty signed at Madrid, Mar. 23, 1922, approved by Uruguay. Text: *D. O. (Uruguay)*, June 15, 1922, p. 449.
- 13 CHILE—COLOMBIA. Ratifications exchanged of treaty of academic interchange, signed June 23, 1921. *P. A. U.*, Sept. 1922, p. 301.
- 15 GERMANY—POLAND. Orders relative to transfer of Upper Silesian territory were signed at Oppeln. *Temps*, June 17, 1922, p. 2.
- 15 to Aug. 10 PERMANENT COURT OF INTERNATIONAL JUSTICE. Opened first annual session at The Hague on June 15. *Wash. Post*, June 17, 1922, p. 8. On July 31, rendered first decision to effect that Workers' Delegate from Netherlands to Third session of International Labor Conference, was nominated in accordance with provisions of Treaty of Versailles. *N. Y. Times*, Aug. 1, 1922, p. 18; *L. N. M. S.*, July, 1922, p. 139. Hearings before Court: *I. L. O. B.*, July 26, 1922, p. 121-207. Adjourned on Aug. 10, after making final awards in the two labor cases before it. To the first question concerning competence of International Labor Organization in regulation of conditions of agricultural workers, the Court gave affirmative decision. To the second question concerning competence of International Labor Organization in matters relating to agricultural production, the Court answered in the negative. *N. Y. Times*, Aug. 13, 1922, p. 16.
- 16 FRANCE—GREAT BRITAIN. Convention relative to legal proceedings between nationals, signed London, Feb. 2, 1922, promulgated in France. Text: *J. O.*, June 20, 1922, p. 6446. *G. B. Treaty ser.*, 1922, no. 5.
- 16 IRISH FREE STATE. Constitution published by Provisional Government. Text: *Cur. Hist.*, August, 1922, v. 16: 880.
- 17 GREAT BRITAIN—UNITED STATES. Ratifications exchanged of supplementary convention, signed Oct. 21, 1921, providing for accession of Canada to property convention of Mar. 2, 1899. *G. B. Treaty ser.*, no. 10, 1922. *Cmd.* 1728; *U. S. Treaty ser.*, no. 663.
- 19 FRANCE—POLAND. Decree issued in France putting into force provisionally the commercial convention of Feb. 6, 1922. *J. O.*, June 20, 1922, p. 6446; *Bd. of Trade J.*, July 6, 1922, p. 15.
- 19 GERMANY—SERB, CROAT, SLOVENE STATE. Ratifications exchanged at Belgrade of provisional commercial treaty signed Feb. 4 and Dec. 5, 1921. *Commerce repts.*, Aug. 28, 1922, p. 619. Serbian and German texts: *Reichs G.*, 1922, teil 2, p. 105.

June, 1922

- 19 VENEZUELA. New constitution approved by the President. Text: *Gaceta oficial (Venezuela) numero extra*, June 24, 1922.
- 20 FRANCE—GREAT BRITAIN. Protocol of Aug. 6, 1914, modifying convention of Oct. 20, 1906, relating to New Hebrides, promulgated in Great Britain. *Lond. Ga.*, June 27, 1922, p. 4791. Text: *G. B. Treaty ser.*, 1922, no. 7.
- 20 FRANCE—SPAIN. Commercial agreement signed at Madrid. Text: *J. O.*, July 12, 1922, p. 7258; *Ga. de Madrid*, July 13, 1922, p. 122.
- 21 to July 24 PALESTINE MANDATE. British House of Lords on June 21, 1922 voted against the mandate, 60 to 29. On July 4, House of Commons supported it by vote of 292 to 35. League of Nations Council approved it on July 24. *Cur. Hist.*, Sept., 1922, v. 16: 983. Text of mandate: *Times*, July 26, 1922, p. 9; *Cmd.* 1708.
- 22 COLOMBIA—URUGUAY. Convention for academic interchange, signed Apr. 28, 1922, ratified by Uruguay. Text: *D. O. (Uruguay)*, June 7, 1922, p. 391.
- 24 JAPAN—SIBERIA. Decision to complete withdrawal of troops from Siberia by Oct. 30, 1922, announced by Japan. *Cur. Hist.*, Aug., 1922, v. 16: 752, 1087.
- 25 GUATEMALA—PORTUGAL. Guatemala recognized by Portugal. *Guatemalteco*, June 28, 1922, p. 193.
- 26(?) AUSTRIA—HUNGARY. Commercial agreement signed at Budapest. *Temps*, June 28, 1922, p. 1.
- 26 FRENCH—HUNGARIAN MIXED ARBITRAL TRIBUNAL. Regulations of procedure made public. Text: *J. O.*, Sept. 1, 1922, p. 9050.
- 26 PERSIA—TURKEY. Angora government recognized by Persia. *Wash. Post*, June 27, 1922, p. 5.
- 28 BULGARIA—ESTHONIA. Bulgaria recognized by Esthonia. *Temps*, June 29, 1922, p. 2.
- 28(?) ESTHONIA—GREECE. Esthonia recognized by Greece. *Temps*, June 29, 1922, p. 2.
- 29 BULGARIA—RUMANIA. Railway convention, based on the Stressa and Berne conventions, signed at Bucharest. *Temps*, July 1, 1922, p. 1.
- 30 LITHUANIA. Council of ambassadors decided to recognize Lithuania. *Wash. Post*, July 1, 1922, p. 6.

July, 1922

- 1 OIL POLLUTION OF NAVIGABLE WATERS. H. J. Res. 297, for calling conference of maritime nations on subject of oil pollution approved by President Harding. *Press notice*, Aug. 5, 1922.
- GREAT BRITAIN—SOVIET RUSSIA. Arrangement concluded by exchange of notes by which Canada will have same commercial rela-

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- tions with Russia as exist between the United Kingdom and Russia under agreement of March 16, 1921. *Commerce reports*, Aug. 28, 1922, p. 618; *Lond. Ga.*, Aug. 1, 1922, p. 5694.
- 3 NEW ZEALAND—UNION OF SOUTH AFRICA. Reciprocal customs tariff agreement terminated by Order in Council of New Zealand, effective Aug. 1. *Commerce repts.*, Aug. 21, 1922, p. 557.
- 3-7 LEAGUE OF NATIONS. MIXED COMMISSION ON REDUCTION OF ARMAMENTS. Session in Paris dealt with Lord Cecil's plan for collective guarantee, Lord Esher's scheme for limitation of land armaments, and Rear Admiral Seagrave's proposal for extension of Washington Naval convention to all members of the League. *L. N. M. S.*, July, 1922, p. 141.
- 4 GERMANY—SOVIET RUSSIA. Political treaty signed at Rapallo on Apr. 16, 1922, ratified by Germany. *Wash. Post*, July 5, 1922, p. 3.
- 5 ALBANIA—CZECHOSLOVAK REPUBLIC. Albanian government recognized by Czechoslovakia. *Ga. de Prague*, July 26, 1922, p. 2.
- 7 AUSTRIA—HUNGARY. Commercial treaty of Feb. 8, 1922 ratified by Austria. *Commerce repts.*, Sept. 11, 1922, p. 741.
- 7 LATVIA—POLAND. Sanitary convention signed at Warsaw. *Temps*, July 11, 1922, p. 1.
- 9(?) CHINA—FRANCE. Agreement signed at Peking concerning the establishment of an industrial bank of China by means of the Boxer indemnity. *Temps*, July 11, 1922, p. 4.
- 10 BELGIUM—FRANCE. Convention signed Feb. 14, 1921 guaranteeing to nationals employed in mines the benefit of pension systems, promulgated in France. Text: *J. O.*, July 12, 1922, p. 7255.
- 11 AERIAL NAVIGATION COMMISSION, INTERNATIONAL. Held first session in Paris as provided by convention of Oct. 13, 1919. *Temps*, July 12, 1922, p. 6.
- 11 BELGIUM—FRANCE. Convention concerning reparation regulations signed Oct. 25, 1921, promulgated in France. Text: *J. O.*, July 12, 1922, p. 7256.
- 11 DOMINICAN REPUBLIC. Secretary Hughes announced plan for withdrawal of American military forces and restoration of full governmental powers to the Dominican people. Extracts: *Cur. Hist.*, Aug., 1922, v. 16: 742.
- 13 JAPAN—UNITED STATES. Treaty relating to Island of Yap proclaimed by President Harding. *U. S. Treaty ser.*, no. 664.
- 15 GERMANY—GREAT BRITAIN—SIAM. Regulations relative to settlement of financial claims of Germans against Siamese in the British Empire and British in Siam, proclaimed in Germany. *Deutsch. Reichs.*, July 19, 1922, p. 1.

July, 1922

- 17-24 LEAGUE OF NATIONS COUNCIL. Held 19th session in London for discussion of various questions, including mandates. Confirmed class A—Palestine and Syria; class B—Kamerun, Togoland, Tanganyika, Ruanda and Urundi in Africa; class C—Yap Island and the former German Pacific Islands. *Our world*, Sept., 1922, p. 102; *N. Y. Times*, July 18, 1922, p. 17; *Wash. Post*, July 25, 1922, p. 3.
- 18/25 ECUADOR—VENEZUELA. Convention concerning diplomatic mails concluded by an exchange of notes. *Gaceta oficial (Venezuela)*, July 29, 1922, p. 49028.
- 21 CHILE—PERU. Tacna-Arica conference closed with the signing of a protocol and supplementary act, providing for arbitration of unfulfilled clauses of the Ancon Treaty by the President of the United States. Texts: *P. A. U.*, September, 1922, p. 217.
- 22 to Aug. 29 NORWAY—UNITED STATES. Hearings of Norwegian shipping case, before arbitral tribunal established under agreement of June 30, 1921, began at Hague Peace Palace on July 22. *N. Y. Times*, July 23, 1922, p. 16. Final session held on Aug. 29. Decision to be rendered in two months. *N. Y. Times*, Aug. 30, 1922, p. 17; *Cur. Hist.*, Sept., 1922, v. 16: 1083.
- 25 GERMANY—PORTUGAL. Commercial agreement of Dec. 6, 1921, denounced by Portugal. *Commerce repts.*, Sept. 11, 1922, p. 741.
- 25(?) GUATEMALA—SPAIN. Guatemalan government under General Orellana recognized by Spain. *Guatemalteco*, July 27, 1922, p. 321.
- 25-29 BULGARIAN REPARATIONS. On July 25, Reparation commission ordered Bulgaria to pay about \$7,720,000 due to Allies. On July 29, Bulgaria replied with a request for a three years' moratorium. *N. Y. Times*, July 30, 1922, p. 3.
- 27 ALBANIA—UNITED STATES. Albanian government recognized by United States. *Wash. Post*, July 28, 1922, p. 2.
- 27(?) GERMANY—POLAND. Convention granting amnesty for plebiscite regions ratified by Polish Diet. *Temps*, July 29, 1922, p. 1.
- 27 ESTHONIA—UNITED STATES. Esthonia recognized by the United States. *Wash. Post*, July 28, 1922, p. 2; *Press notice*, July 27, 1922.
- 27 FRANCE—GERMANY. France refused to grant Germany's request of July 16 for a reduction of 75 per cent in payments on private claims. *N. Y. Times*, July 28, 1922, p. 15.
- 27 LATVIA—UNITED STATES. Latvia recognized by the United States. *Wash. Post*, July 28, 1922, p. 2.
- 27 LITHUANIA—UNITED STATES. Lithuania recognized by the United States. *Wash. Post*, July 28, 1922, p. 2.

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- 28 FRANCE—GUATEMALA. Commercial agreement signed. *Commerce reports*, Sept. 11, 1922, p. 741; *Guatemalteco*, Aug. 4, 1922, p. 353.
- 28 GREAT BRITAIN—ICELAND. Ratifications exchanged at London of convention signed May 1, 1922, renewing for five years the arbitration convention of Oct. 25, 1905. Text: *G. B. Treaty ser.*, 1922, no. 13.
- 29 BRAZIL—GREAT BRITAIN. Treaty governing dual nationality in connection with military service signed at Rio de Janeiro. *Times*, Aug. 1, 1922, p. 9.
- 29 to Aug. 25 INSTITUTE OF POLITICS. Second conference held at Williamstown, Mass. *N. Y. Times*, July 30—Aug. 26, 1922; *Our world*, Sept., 1922, p. 9.
- 30 SMYRNA. High-Commissioner of Greece proclaimed autonomy of Smyrna. *Temps*, July 31, 1922, p. 4; *N. Y. Times*, Aug. 1, 1922, p. 21.
- 31(?) RHODESIA, SOUTHERN. Terms of entrance into Union of South Africa made public. *Times*, Aug. 2, 1922, p. 7.

August, 1922

- 1 BELGIUM—SWITZERLAND. Ratifications exchanged of the provisional air traffic convention of June 13, 1922. Text: *E. G.*, Aug. 23, 1922, p. 495.
- 1 INTER-ALLIED DEBTS. The Earl of Balfour dispatched note on subject of war debts to representatives in London of France, Italy, Greece, Portugal, Rumania and Serb, Croat, Slovene State. Text: *Times*, Aug. 2, 1922, p. 8; *G. B. Misc. ser.*, 1922, no. 5.
- 1-11 LEAGUE OF NATIONS. MANDATES COMMISSION. Held sessions at Geneva to examine labor conditions, liquor traffic, public health, fiscal systems, etc., in mandated territories of various countries. *Temps*, Aug. 1-13, 1922.
- 2 PERMANENT COURT OF INTERNATIONAL JUSTICE. Council of ambassadors decided to lay Kiel dispute before the Court for settlement. *N. Y. Times*, Aug. 3, 1922, p. 1.
- 5 POLAND—SWITZERLAND. Ratifications exchanged of the commercial agreement signed at Warsaw, June 26, 1922. German text: *E. G.*, Aug. 16, 1922, p. 481.
- 7-14 LONDON CONFERENCE ON REPARATIONS. Premiers of France, Great Britain, Italy, Japan and Belgium, met on Aug. 7 to discuss allied policy. *Times*, Aug. 8, 1922, p. 6; *Europe*, Aug. 19, 1922, p. 1046. Adjourned on Aug. 14 without definite results, except agreement to allow next payment of two million pounds from Germany to be made within next four weeks. *Times*, Aug. 15, 1922, p. 8; *Temps*, Aug. 16, 1922, p. 1.

August, 1922

- 10 GERMANY—UNITED STATES. Agreement signed at Berlin providing for a claims commission to determine amount of the claims against Germany. Text: *Wash. Post*, Aug. 11, 1922, p. 1, 4; *U. S. Treaty series*, no. 665.
- 10 WASHINGTON ARMS CONFERENCE TREATIES. Ratified copy signed by King George, and dispatched to Washington for exchange of ratifications. *Wash. Post*, Aug. 11, 1922, p. 3.
- 11(?) CZECHOSLOVAK REPUBLIC—EGYPT. Government of Egypt recognized by Czechoslovakia. *Temps*, Aug. 13, 1922, p. 1.

INTERNATIONAL CONVENTIONS

AERIAL NAVIGATION. Paris, Oct. 13, 1919. Protocol, Paris, May 1, 1920.

Adhesion:

Persia. Apr. 9, 1920. *G. B. Treaty ser.*, 1922, no. 11. Cmd. 1741.

Ratifications deposited: June 1, 1922. *G. B. Treaty ser.*, 1922, no. 11. Cmd. 1741.

Text:

J. O., July 14, 1922, p. 7378; *G. B. Treaty ser.*, 1922, no. 11.

ALAND ISLANDS. Geneva, Oct. 20, 1921.

Ratifications exchanged: Apr. 6, 1922.

Denmark, Esthonia, Finland, France, Germany, Great Britain, Italy, Latvia, Poland and Sweden. *G. B. Treaty ser.*, 1922, no. 6. Cmd. 1680.

ARMS AND AMMUNITIONS TRADE. Saint Germain-en-Laye, Sept. 10, 1919.

Promulgation:

Brazil. May 10, 1922. *P. A. U.*, Aug., 1922, p. 190.

Ratification deposited:

Greece. Aug. 25, 1920. *L. N. O. J.*, July, 1922, p. 715.

CHEMISTRY BUREAU. Paris, Oct. 16, 1912.

Ratification:

France. May 11, 1922. *J. O.*, May 12, 1922, p. 4886.

CHINESE CUSTOMS TARIFF. Washington, Feb. 6, 1922.

Ratification:

Australia. July 27, 1922. *Temps*, Aug. 4, 1922, p. 1; *Cur. Hist.*, Sept., 1922, v. 16: 1067.

Japan. Aug. 5, 1922. *Wash. Post*, Aug. 6, 1922, p. 9; *Cur. Hist.*, Sept., 1922, v. 16: 1087.

South Africa. July 19, 1922. *N. Y. Times*, July 20, 1922, p. 19; *Cur. Hist.*, Sept., 1922, v. 16: 1068.

CIVIL PROCEDURE. The Hague, July 17, 1905.

Notice that convention is binding:

Austria. May 30, 1922. *E. G.*, July 26, 1922, p. 473.

CONGO (GENERAL ACT OF BERLIN). Berlin, Feb. 26, 1885. Revision.
Saint-Germain-en-Laye, Sept. 10, 1919.

Promulgation:

France. June 19, 1922. *J. O.*, June 24, 1922, p. 6618.

COPYRIGHT UNION. Revision, Berlin, Nov. 13, 1908. Protocol, Berne,
Mar. 20, 1914.

Adhesion:

Danzig. June 24, 1922. *E. G.*, July 19, 1922, p. 456; *Monit.*, July 29,
1922, p. 5380.

EIGHT-HOUR DAY. Washington, Nov. 28, 1919.

Promulgation:

Rumania. May 9, 1921. *I. L. O. B.*, Aug. 9, 1922, p. 255.

Ratification:

Greece. July, 1920. *I. L. O. B.*, Aug. 9, 1922, p. 255.

EMPLOYMENT OF CHILDREN AT SEA. Genoa, July 9, 1920.

Promulgation:

Rumania. Apr. 13, 1922. *I. L. O. B.*, June 21, 1922, p. 432.

EMPLOYMENT OF CHILDREN IN INDUSTRY. Washington, Nov. 28, 1919.

Promulgation:

Rumania. May 9, 1921. *I. L. O. B.*, Aug. 9, 1922, p. 255.

Ratification:

Greece. July, 1920. *I. L. O. B.*, Aug. 9, 1922, p. 255.

Netherlands. May 19, 1922. *I. L. O. B.*, May 31, 1922, p. 388.

FOOD ANALYSIS STATISTICS. Paris, Oct. 16, 1912.

Promulgation:

France. May 11, 1922. *J. O.*, May 12, 1922, p. 4886.

Signatures:

Argentina, Denmark, France, Hungary, Italy, Mexico, Norway, Portugal,
Uruguay. *J. O.*, May 12, 1922, p. 4886.

FREEDOM OF TRANSIT. Barcelona, Apr. 20, 1921.

Ratification deposited:

Bulgaria. *L. N. M. S.*, July, 1922, p. 141.

HAGUE CONVENTION, No. I. (Pacific Settlement of disputes.) Oct. 18,
1907.

Adhesion:

Czechoslovak Republic.

Finland. *Monit.*, Aug. 5, 1922, p. 5591 and 5592.

Poland. *Ga. de Madrid*, July 2, 1922, p. 20; *Monit.*, Aug. 5, 1922, p.
5592.

HAGUE CONVENTION, No. III. (Opening of Hostilities.) Oct. 18, 1907.

Adhesion:

Finland. *Monit.*, Aug. 5, 1922, p. 5592.

HAGUE CONVENTION, No. IV. (Laws of Land warfare.) Oct. 18, 1907.

Adhesion:

Finland. *Monit.*, Aug. 5, 1922, p. 5592.

HAGUE CONVENTION, No. V. (Neutrals in Land warfare.) Oct. 18, 1907.

Adhesion:

Finland. *Monit.*, Aug. 5, 1922, p. 5592.

HAGUE CONVENTION, No. VI. (Status of Enemy Merchant Ships.) Oct. 18, 1907.

Adhesion:

Finland. *Monit.*, Aug. 5, 1922, p. 5592.

HAGUE CONVENTION, No. VII. (Conversion of Merchant Ships.) Oct. 18, 1907.

Adhesion:

Finland. *Monit.*, Aug. 5, 1922, p. 5592.

HAGUE CONVENTION, No. VIII. (Submarine Mines.) Oct. 18, 1907.

Adhesion:

Finland. *Monit.*, Aug. 5, 1922, p. 5592.

HAGUE CONVENTION, No. IX. (Bombardments.) Oct. 18, 1907.

Adhesion:

Finland. *Monit.*, Aug. 5, 1922, p. 5592.

HAGUE CONVENTION, No. X. (Geneva Convention in Naval War.) Oct. 18, 1907.

Adhesion:

Finland. *Monit.*, Aug. 5, 1922, p. 5592.

Latvia. Apr. 1, 1922. *E. G.*, June 14, 1922, p. 396.

Netherlands. Apr. 1, 1922. *Ga. de Madrid*, May 29, 1922, p. 748.

HAGUE CONVENTION, No. XI. (Right of Capture.) Oct. 18, 1907.

Adhesion:

Finland. *Monit.*, Aug. 5, 1922, p. 5592.

HAGUE CONVENTION, No. XIII. (Neutral Powers in Naval War.) Oct. 18, 1907.

Adhesion:

Finland. *Monit.*, Aug. 5, 1922, p. 5592.

HAGUE CONVENTION, No. XIV. (Projectiles and Explosives.) Oct. 18, 1907.

Adhesion:

Finland. *Monit.*, Aug. 5, 1922, p. 5592.

HOSPITAL SHIPS. The Hague, Dec. 21, 1904.

Notice that convention is binding:

Austria. June 6, 1922. *E. G.*, July 26, 1922, p. 474.

LATIN MONETARY UNION. Paris, Nov. 6, 1885. Additional Protocol. Paris, Dec. 9, 1921.

Ratification:

Belgium, France, Greece, Italy, Switzerland. June 15, 1922. *J. O.*, July 2, 1922, p. 6918.

LEAGUE OF NATIONS. Covenant. Protocols of Amendments. Geneva, Oct. 3-5, 1921.

Ratification:

Denmark. *L. N. M. S.*, July, 1922, p. 141.

Uruguay. June 16, 1922. *D. O. (Uruguay)*, June 20, 1922, p. 477.

Italy.

Siam. *Temps*, Aug. 9, 1922, p. 2.

Signatures:

Bolivia, Costa Rica, Haiti, Liberia, Panama, Paraguay. April, 1922. *L. N. M. S.*, April, 1922, p. 73.

Australia, Canada, United Kingdom, New Zealand, Italy, Cuba (with exceptions by each country). May, 1922. *L. N. M. S.*, May, 1922, p. 94.

LETTERS, ETC., OF DECLARED VALUE. Madrid, Nov. 30, 1920.

Adhesion:

Estonia. *Monit.*, Aug. 13, 1922, p. 5797.

San Marino. May 30, 1922. *E. G.*, Aug. 23, 1922, p. 500.

Ratification:

Bulgaria. Dec. 16, 1921. *Ga. de Madrid*, June 2, 1922, p. 821.

Egypt. *Monit.*, Apr. 28, 1922, p. 3395.

Ethiopia. Dec. 19, 1921. *Ga. de Madrid*, June 2, 1922, p. 821.

Japan (and dependencies). Feb. 13, 1922.

Newfoundland. Nov. 15, 1921.

New Zealand. Nov. 28, 1921.

Portugal (and colonies). Mar. 4, 1922. *Monit.*, Aug. 5, 1922, p. 5592.

LIQUOR TRAFFIC IN AFRICA. Saint Germain-en-Laye, Sept. 10, 1919.

Promulgation:

France. June 19, 1922. *J. O.*, June 24, 1922, p. 6618.

MATERNITY CONVENTION. Washington, Nov. 28, 1919.

Adhesion:

Spain. July 3, 1922. *Ga. de Madrid*, July 15, 1922, p. 178.

Promulgation:

Rumania. May 9, 1921. *I. L. O. B.*, Aug. 9, 1922, p. 255.

Ratification:

Greece. July, 1920. *I. L. O. B.*, Aug. 9, 1922, p. 255.

MONEY ORDERS. Madrid, Nov. 30, 1920.*Adhesion:*

Latvia. July 8, 1922. *E. G.*, Aug. 16, 1922, p. 492.

San Marino. May 30, 1922. *E. G.*, Aug. 23, 1922, p. 500.

Ratification:

Bulgaria. Dec. 16, 1921. *Ga. de Madrid*, June 2, 1922, p. 821.

Egypt. *Monit.*, Apr. 28, 1922, p. 3395.

Ethiopia. Dec. 19, 1921. *Ga. de Madrid*, June 2, 1922, p. 821.

Japan (and dependencies). Feb. 13, 1922. *Monit.*, Aug. 5, 1922, p. 5592.

Peru. Nov. 15, 1921. *P. A. U.*, August, 1922, p. 191.

Portugal (and colonies). Mar. 4, 1922. *Monit.*, Aug. 5, 1922, p. 5592.

NAVAL LIMITATION TREATY. Washington, Feb. 6, 1922.*Ratification:*

Australia. July 27, 1922. *Temps*, Aug. 4, 1922, p. 1; *Cur. Hist.*, Sept., 1922, v. 16: 1067.

Japan. Aug. 5, 1922. *Wash. Post*, Aug. 6, 1922, p. 9; *Cur. Hist.*, Sept., 1922, v. 16: 1087.

South Africa. July 19, 1922. *N. Y. Times*, July 20, 1922, p. 19; *Cur. Hist.*, Sept., 1922, v. 16: 1068.

NAVIGABLE WATERWAYS AND PROTOCOL. Barcelona, Apr. 20, 1921.*Ratification deposited:*

Bulgaria. *L. N. M. S.*, July, 1922, p. 141.

NIGHT WORK OF WOMEN. Washington, Nov. 28, 1919.*Promulgation:*

Rumania. May 9, 1921. *I. L. O. B.*, Aug. 9, 1922, p. 255.

Ratification:

Greece. July, 1920. *I. L. O. B.*, Aug. 9, 1922, p. 255.

Netherlands. May 19, 1922. *I. L. O. B.*, May 31, 1922, p. 388.

NIGHT WORK OF YOUNG PERSONS. Washington, Nov. 28, 1919.*Promulgation:*

Rumania. May 9, 1921. *I. L. O. B.*, Aug. 9, 1922, p. 255.

Ratification:

Greece. July, 1920. *I. L. O. B.*, Aug. 9, 1922, p. 255.

Netherlands. May 19, 1922. *I. L. O. B.*, May 31, 1922, p. 388.

OPEN DOOR (INTEGRITY OF CHINA). Washington, Feb. 6, 1922.*Ratification:*

Australia. July 27, 1922. *Temps*, Aug. 4, 1922, p. 1; *Cur. Hist.*, Sept., 1922, v. 16: 1067.

Japan. Aug. 5, 1922. *Wash. Post*, Aug. 6, 1922, p. 9; *Cur. Hist.*, Sept., 1922, v. 16: 1087.

South Africa. July 19, 1922. *N. Y. Times*, July 20, 1922, p. 19; *Cur. Hist.*, Sept., 1922, v. 16: 1068.

PACIFIC POSSESSIONS TREATY AND DECLARATION. Washington, Dec. 13, 1921.

Ratification:

Australia. July 27, 1922. *Temps*, Aug. 4, 1922, p. 1; *Cur. Hist.*, Sept., 1922, v. 16: 1067.

Japan. Aug. 5, 1922. *Wash. Post*, Aug. 6, 1922, p. 9; *Cur. Hist.*, Sept., 1922, v. 16: 1087.

South Africa. July 19, 1922. *N. Y. Times*, July 20, 1922, p. 19; *Cur. Hist.*, Sept., 1922, v. 16: 1068.

PACIFIC POSSESSIONS TREATY. Supplement. Washington, Feb. 6, 1922.

Ratification:

Australia. July 27, 1922. *Temps*, Aug. 4, 1922, p. 1; *Cur. Hist.*, Sept., 1922, v. 16: 1067.

Japan. Aug. 5, 1922. *Wash. Post*, Aug. 6, 1922, p. 9; *Cur. Hist.*, Sept., 1922, v. 16: 1087.

South Africa. July 19, 1922. *N. Y. Times*, July 20, 1922, p. 19; *Cur. Hist.*, Sept., 1922, v. 16: 1068.

PARCEL POST CONVENTION. Madrid, Nov. 30, 1920.

Adhesion:

Estonia. *Monit.*, Aug. 13, 1922, p. 5797.

San Marino. May 30, 1922. *E. G.*, Aug. 23, 1922, p. 500.

Ratification:

Bulgaria. Dec. 16, 1921.

Ecuador. Dec. 10, 1921. *Ga. de Madrid*, June 2, 1922, p. 821; *Monit.*, Aug. 5, 1922, p. 5592.

Egypt. *Monit.*, Apr. 28, 1922, p. 3395.

Ethiopia. Dec. 19, 1921. *Ga. de Madrid*, June 2, 1922, p. 821; *Monit.*, Aug. 5, 1922, p. 5592.

Japan (and dependencies). Feb. 13, 1922. *Monit.*, Aug. 5, 1922, p. 5592.

Peru. Nov. 15, 1921. *P. A. U.*, August, 1922, p. 191.

Portugal (and colonies). Mar. 4, 1922. *Monit.*, Aug. 5, 1922, p. 5592.

PERMANENT COURT OF INTERNATIONAL JUSTICE. Protocol of Signature. Geneva, Dec. 16, 1920.

Ratification:

China. May 13, 1922. *L. N. O. J.*, Aug., 1922, p. 757.

Finland. Apr. 16, 1922. *L. N. O. J.*, June, 1922, p. 475.

PERMANENT COURT OF INTERNATIONAL JUSTICE. Optional Clause. Geneva, Dec. 16, 1920.

Ratification:

China. May 13, 1922. *L. N. O. J.*, Aug., 1922, p. 757.

Finland. Apr. 6, 1922. *L. N. O. J.*, June, 1922, p. 475

POSTAL CONVENTION. Madrid, Nov. 13, 1920.*Ratification:*

Costa Rica. July 5, 1922. *Ga. de Madrid*, July 9, 1922, p. 84.

Nicaragua. July 8, 1922. *Ga. de Madrid*, July 19, 1922, p. 220.

Paraguay. May, 1922. *P. A. U.*, Sept., 1922, p. 301.

United States. June 5, 1922. *Ga. de Madrid*, June 9, 1922, p. 908.

POSTAL SUBSCRIPTIONS TO NEWSPAPERS. Madrid, Nov. 30, 1920.*Adhesion:*

Latvia. July 8, 1922. *E. G.*, Aug. 16, 1922, p. 492.

San Marino. May 30, 1922. *E. G.*, Aug. 23, 1922, p. 500.

Ratification:

Bulgaria. Dec. 16, 1921. *Ga. de Madrid*, June 2, 1922, p. 821; *Monit.*, Aug. 5, 1922, p. 5592.

Egypt. *Monit.*, Apr. 28, 1922, p. 3395.

Portugal (and colonies). Mar. 4, 1922. *Monit.*, Aug. 5, 1922, p. 5592.

POSTAL TRANSFERS. Madrid, Nov. 30, 1920.*Adhesion:*

Latvia. July 8, 1922. *E. G.*, Aug. 16, 1922, p. 492.

San Marino. May 30, 1922. *E. G.*, Aug. 23, 1922, p. 500.

Ratification:

Ethiopia. Dec. 19, 1921. *Ga. de Madrid*, June 2, 1922, p. 821; *Monit.*, Aug. 5, 1922, p. 5592.

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Portugal (and colonies). Mar. 4, 1922. *Monit.*, Aug. 5, 1922, p. 5592.

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Danzig. June 29, 1922. *E. G.*, July 19, 1922, p. 462; *Monit.*, July 19, 1922, p. 5098.

PROTECTION OF INDUSTRIAL PROPERTY. Paris, Mar. 20, 1883. Revision. Brussels, Dec. 14, 1900; Washington, June 2, 1911.*Adhesion:*

Luxemburg. May 12, 1922. *Monit.*, June 24, 1922, p. 4546; *E. G.*, June 7, 1922, p. 394.

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Cuba. Jan. 16, 1918.

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REFRIGERATION, INTERNATIONAL INSTITUTE OF. Paris, June 21, 1920.*Adhesion:*

Austria. Dec. 17, 1921. *J. O.*, July 14, 1922, p. 7367.

Ratification:

France. July 29, 1922. *J. O.*, Aug. 27, 1922, p. 8918.

Luxemburg. May 26, 1922.

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REPRESSION OF OBSCENE PUBLICATIONS. Paris, May 4, 1910.*Adhesion:*

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RIGHT TO A FLAG, OF STATES HAVING NO SEACOAST. Barcelona, Apr. 20, 1921.*Ratification deposited:*

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Austria. Apr. 26, 1922. *E. G.*, June 7, 1922, p. 393.

Czechoslovak Republic. June 4, 1921. *Monit.*, May 21, 1922, p. 3858; *E. G.*, June 7, 1922, p. 394.

SANITARY CONVENTION. Paris, Jan. 17, 1912.*Promulgation:*

Brazil. Apr. 19, 1922. *P. A. U.*, August, 1922, p. 190.

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Luxemburg. June 28, 1922. *Monit.*, Aug. 23, 1922, p. 5952.

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San Marino. May 30, 1922. *E. G.*, Aug. 23, 1922, p. 500.

Ratification:

Egypt. *Monit.*, Apr. 28, 1922, p. 3395.

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SUBMARINE AND POISON GAS. Washington, Feb. 6, 1922.*Ratification:*

Australia. July 27, 1922. *Temps*, Aug. 4, 1922, p. 1; *Cur. Hist.*, Sept., 1922, v. 16: 1067.

Japan. Aug. 5, 1922. *Wash. Post*, Aug. 6, 1922, p. 9; *Cur. Hist.*, Sept., 1922, v. 16: 1087.

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Adhesion:

Spain. July 3, 1922. *Ga. de Madrid*, July 15, 1922, p. 178.

Promulgation:

Rumania. May 9, 1921. *I. L. O. B.*, Aug. 9, 1922, p. 255.

Ratification:

Greece. July, 1920. *I. L. O. B.*, Aug. 9, 1922, p. 255.

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Ratification:

Australia. Aug. 17, 1921. *Ga. de Madrid*, June 2, 1922, p. 821; *Monit.*, Aug. 5, 1922, p. 5592.

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Bulgaria. Dec. 16, 1921.

Ecuador. Dec. 10, 1921. *Ga. de Madrid*, June 2, 1922, p. 821; *Monit.*, Aug. 5, 1922, p. 5592.

Egypt. *Monit.*, Apr. 28, 1922, p. 3395.

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Japan (and dependencies). Feb. 13, 1922. *Monit.*, Aug. 5, 1922, p. 5592.

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Portugal (and colonies). Mar. 4, 1922. *Monit.*, Aug. 5, 1922, p. 5592.

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Ratification:

Greece. May 11, 1922. *I. L. O. B.*, May 31, 1922, p. 388.

WHITE LEAD IN PAINTING. Geneva, Nov. 19, 1921.

Ratification:

Greece, May 11, 1922. *I. L. O. B.*, May 31, 1922, p. 388.

WHITE PHOSPHORUS IN MATCHES. Berne, Sept. 26, 1906.

Adhesion:

Australia. Dec. 30, 1919. *I. L. O. B.*, Aug. 9, 1922, p. 255.

Ratification:

India. February, 1921. *I. L. O. B.*, Aug. 9, 1922, p. 255.

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Adhesion:

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M. ALICE MATTHEWS.

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Egypt, Status of. Despatch to His Majesty's representatives abroad respecting the. (Cmd. 1617.) 2½d.

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Genoa Conference. Resolutions adopted by the Supreme Council at Cannes as the basis of. January, 1922. (Cmd. 1621.) 4d.

———. Telegram from M. Chicherin, Moscow, to the Governments of Great Britain, France, and Italy, respecting the. (Cmd. 1637.) 2½d.

———. Resolutions of the Financial Commission recommending certain resolutions for adoption by the conference; reports of the Committee of Experts appointed currency and exchange subcommissions of the Financial Commission. (Cmd. 1650.) 3½d.

———. Memorandum sent to Russian delegation, May 3, 1922. (Cmd. 1657.) 3½d.

———. Papers relating to, April–May, 1922. (Cmd. 1667.) 2s. 2½d.

German Reparation Recovery. Orders made by the Board of Trade under the Act of 1921: No. 1 (S. R. & O. 1922, No. 139); No. 2 (S. R. & O. 1922, No. 140). 1½d. each.

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¹ Parliamentary and official publications of Great Britain may be obtained for the amount noted from the Superintendent of Publications, H. M. Stationery Office, Imperial House, Kingsway, London, W. C. 2.

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International Labor Conference. Draft conventions and recommendations adopted at third session, Oct. 25–Nov. 19, 1921. [French and English.] (Cmd. 1612.) 10½d.

Irish Free State Agreement. (Ch. 4, 12 Geo. V.) 4d.

Limitation of armament, Washington, 1921–1922. Treaties, resolutions, etc. (Misc. No. 1, 1922. Cmd. 1627.) 2s. 2d.

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Peace Conference, Paris, 1919. Memorandum circulated by the Prime Minister on March 25, 1919. (Cmd. 1614.) 4d.

Peace Treaties Orders (Amendment) Order, 1922. (S. R. & O. 1922, No. 249.) 1½d.

Real Estate and acquisition of mines, mining and oil rights, etc., by aliens in foreign countries, Holding of. *Foreign Office.* 3s. 8½d.

Reparation. Agreement between the Allies for settlement of certain questions as to the application of the treaties of peace and complementary agreements with Germany, Austria, Hungary, and Bulgaria, signed at Spa, July 16, 1920. (Cmd. 1615.) 4d.

———. Financial agreement between Belgium, France, Great Britain, Italy, and Japan, together with a covering note by the Finance Ministers, signed at Paris, March 11, 1922. (Cmd. 1616.) 4d.

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Russian Soviet Government. Correspondence with the, respecting imprisonment of Mrs. Stan Harding. (Cmd. 1602.) 4d.

Treaty of Versailles, June 28, 1919. Agreement between the British and German Governments respecting Art. 297 (c). (Payment of compensation in respect of damage, etc., to property, rights or interests.) Signed, Nov. 23, 1921. (Treaty Series, 1921, No. 27.) 4d.

———. Convention between United Kingdom and Siam respecting settlement of enemy debts referred to in Sec. 111 of Part X. Signed London, Dec. 20, 1921. (Treaty Series, 1922, No. 3.) 2½d.

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Alien property and its relation to trade, commerce, and American claims. Speech by Thomas W. Miller, Alien Property Custodian, Jan. 14, 1922. 5 p. (H. doc. 322.) *House of Representatives*.

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Austria. S. J. Res. 160, joint resolution authorizing extension, for period of not to exceed 25 years, of time for payment of principal and interest of debt incurred by Austria for purchase of flour from Grain Corporation. Approved April 6, 1922. 1 p. (Pub. Res. 46.) 5c.

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² Where prices are given, the document may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

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Haitian Customs Receivership. Report of fifth fiscal period, Oct. 1, 1920-Sept. 30, 1921, with summary of commerce for fiscal year. 38 p. il. *Insular Affairs Bureau.*

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Japan. Treaty between United States and, regarding rights in former German islands in Pacific Ocean, and in particular the Island of Yap, signed Feb. 11, 1922, proclaimed July 13, 1922. 6 p. (Treaty Series 664.) *State Dept.*

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Pan American Postal Union. Principal convention of Buenos Aires, Sept. 15, 1921, with detailed regulations for its execution. 1922. 22 p. [Spanish and English.] *Post Office Dept.*

Parcel post convention between United States and Siam, signed Washington, Feb. 24, 1922, Bangkok, Oct. 15, 1921, approved Feb. 28, 1922. 7 p. *Post Office Dept.*

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Peace treaty between United States and Germany, signed Berlin, Aug. 25, 1921. (Reprint with change of title and ratification.) 10 p. (Treaty series 658.) [English and German.] *State Dept.*

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Real and personal property convention of 1899 between Great Britain and United States. Supplementary convention providing for accession of Canada to, signed Oct. 21, 1921, proclaimed June 19, 1922. 2 p. (Treaty Series 663.) *State Dept.*

Russia. Statement from Boris Bakhmeteff, Russian Ambassador, with letter of transmittal from Secretary of State, in regard to advances made by United States Treasury to provisional government of Russia. May 6, 1922. 2 p. (S. doc. 200.) *State Dept.*

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———. Hearings. Feb. 15-18, 1922. 75 p. *For. Aff. Com.*

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Women. Naturalization and citizenship of married women. Report to accompany H. R. 12022. June 16, 1922. 3 p. (H. rp. 1110.) *Immigration & Naturalization Com.*

———. Hearings. 569-591 p. (Serial 5-B.) *Immigration & Naturalization Com.*

GEO. A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF
INTERNATIONAL LAW

GERMAN WAR TRIALS¹

SUPREME COURT AT LEIPZIG

JUDGMENT IN THE CASE OF KARL HEYNEN

Rendered May 26, 1921

IN THE NAME OF THE EMPIRE

In the criminal case against Karl Heynen, master cooper, of and born in Barmen on 22 June, 1875, for crimes and offences contrary to §§122, 55, 1, 121 Military Penal Code, and §74 Imperial Penal Code the Second Penal Senate of the Imperial Court of Justice at a Sitting in public on 26 May, 1921, at which there took part as Judges—

The President of the Senate Dr. Schmidt and the Justices of the Imperial Court, Dr. Sabarth, Dr. Paul, Dr. Schultz, Dr. Kleine, Hagemann, Dr. Vogt.

As officials of the Public Prosecutor's Department.

The Oberreichsanwalt, Dr. Ebermayer and Dr. Feisenberger, Attorney for the State.

As Clerk of the Court.

Risch, Official,
after oral evidence.

The accused is condemned to ten (10) months' imprisonment on fifteen charges of ill-treating subordinates, and on three charges of insulting subordinates, and on charges of having treated subordinates contrary to the regulations; in other respects he is acquitted.

The detention during the enquiry is to be taken into account in the sentence passed.

The costs of the proceedings, in the cases in which the accused is condemned, are imposed upon him and in the cases, in which he is acquitted, they are to be borne by the Imperial Treasury.

The Treasury is to bear also in the first-mentioned cases all expenses, including the necessary expenses of the accused.

By Right

¹British Parliamentary Command Paper No. 1450.

REASONS FOR THE DECISION

I. The accused served 1895-1897 with the 145th King's Infantry Regiment and in the year 1901, after training with the 138th Infantry Regiment, was promoted non-commissioned officer; he was called up in the autumn of 1914 as non-commissioned officer with the second Münster Landsturm Battalion. He took part in the campaign in Russia, was wounded on 29th December, 1914, on the Pelizza, then returned to Münster and was posted for a period of 7 months to the prisoners of war camp at Rheine. His camp commandant at that time, Deputy Officer Radenberg, has testified to his great zeal, absolute trustworthiness and faultless conduct. There has been no complaint of any kind of excess towards the Russian prisoners of war, who were placed under him and were occupied with agricultural work.

At the beginning of October, 1915, he was recalled to the first Münster prisoners' camp, in order to take over the command of the new prisoners' camp to be organized at shaft V of the "Friedrich der Grosse" mine near Herne. He received as his sentries a draft of 1 Lance Corporal and 12 Landsturm men, most of whom had only received their necessary training during the war.

There were placed under him 240 prisoners of war, of whom about 200 were English and 40 were Russians. They were to work in a colliery. This was kept secret from them, probably because it was foreseen that they might be unwilling to undertake such work. In fact they believed, from what they had been told, that they were to work at a sugar factory.

On 13 October, 1915, accused with his detachment of sentries and the prisoners left Münster for Herne. He had received no further orders than that he had to see to it that the prisoners undertook the work intended for them; he was to make his own arrangements; until his arrival in camp in Herne he was to keep silent about their place of destination and the work intended for them.

On the way already discontent became apparent among the prisoners, because they saw that they were going to be made to work in a mine. They vented their discontent by such utterances as "Nix Minen" and thus let it be understood that they would not work in a mine. It was impossible for the accused to make himself understood to the prisoners as he had not been allotted an interpreter.

II. After arrival at the railway station at Herne, the accused first endeavored to find amongst the English prisoners a man, who understood German sufficiently to be able to act to some extent as interpreter for his fellow prisoners. Such a man he found in the English prisoner Parry, who, however, at that time, had but little knowledge of German. Parry understood him only partially. In consequence the accused, according to Parry's statement which is considered to be credible, himself got angry and so irri-

table that he called him "Englischer Schweinhund" (Dog of an Englishman). He thus insulted this prisoner of war who, by being placed under his command, had become his subordinate. At this time the accused was endeavoring to carry out his duties. Therefore he is guilty of a breach of §121 para. 1, of the Military Penal Code and deserves increased punishment under §55, No. 2, of the Military Penal Code.

III. In consequence of the discontent generally prevailing among the prisoners, their march from Herne railway station to the camp at shaft V (a distance of about half-an-hour's walk) was very slow. On their arrival in camp the prisoners were very dilatory in obeying orders, which were repeatedly and emphatically given them; and this although most of them had already been prisoners for almost a year and must have known their obligations as regards obedience.

On this occasion the Englishman Gothard, in particular, disregarded the order to fall in, because he wished first to mix his cocoa at a hot-water pipe. Excited over this disobedience, the accused, as has been credibly stated by Gothard and other witnesses, hit Gothard on the head with the fist and as he ducked under the blows, gave him a blow on the nose and eye with his sheathed side-arm, thus drawing blood. In this the accused offended against §§122, para. 1, 55, No. 2, of the Military Penal Code. This case is the same as that in para. I, 20, of the indictment, which charges him with ill-usage of an unknown Englishman.

It has not been proved that the accused on this evening committed any further punishable offences. That he did so is asserted by some witnesses (Abel, McLaren), but there is apparently some confusion with events of the following day, the 14th October. These are dealt with later. The prisoners fell in and a roll was called. They were then divided into working shifts for the following day. At the same time clothes were handed out to them, which they were to wear while at work in the pit.

IV. During the night of 13th-14th October the English prisoners agreed jointly to refuse to work in the mine, partly because only a few of them were miners and they did not like this kind of work, and partly because they looked upon such work as a help to Germany in her conduct of the war. In consequence of this, on the morning of 14th October, only some of the English prisoners, who were to form the morning shift, put in an appearance. Some of these, however, had not put on the mining clothes, which had been given out to them, though they had the clothes with them. Others had left the mining clothes in the sleeping room. As they had planned, they refused to obey the repeated order to put on the mining clothing. There were loud shouts such as "Nix Minen." They informed the accused through Parry that they would not go down the mine and gave their reasons.

In view of the strict orders given to the accused to see that under any circumstances the work was undertaken, he found himself in a difficult position. In order to enforce obedience to his orders to change clothes, which

had been repeated and explained to the prisoners, the accused first ordered his men to hold their rifles and to fix bayonets before the prisoners' eyes. Thereby he showed without any doubt that he intended his orders to be obeyed. By no such means could he succeed in breaking the disobedience of the prisoners. He was no more successful when he arrested and placed in the cells a number of them, who persisted in their disobedience in spite of repeated orders given personally. On the contrary the prisoners still made it clear by shouts, such as "Arrest" and the like, that they were determined, as they had agreed, not to obey the order to change their clothes. The position was not changed even when the pickets showed clearly that they were ready to use their bayonets and rifles. In order to quell this open revolt without delay and to break the prisoners' determination before their insubordination grew worse, the accused, thrown back entirely upon his own resources, was obliged to use force to secure obedience to his orders. In so acting he was justified and in duty bound. He was bound by the orders given to him to see that the work was done and by those orders he was covered. In view of these orders, a refusal of obedience, especially when general and disorderly, was inadmissible. Though they had a right to lodge complaints, the prisoners, as subordinates, were bound to comply unconditionally with the orders of the accused, even in cases in which they considered the orders to be illegal. In so far as the accused employed force, or ordered it to be employed, in order to quell an open revolt on the part of the prisoners or to compel obedience to his orders, he has not acted contrary to law and consequently has not rendered himself liable to punishment.

This right of compelling obedience includes, under the then existing circumstances, a right to make any necessary use of weapons; and this independently of §124 of the Military Penal Code. In particular, the accused committed no breach of the law, when under such circumstances, in order to avoid unnecessary bloodshed he did not make use of rifles and side-arms for the purpose of shooting or stabbing, but used the butt ends of the rifles against unruly prisoners.

It is essential, however, that, in the use of physical force, whether by the use of weapons or without, a man in such a position should not exceed the degree of force necessary to compel obedience. It has not been proved that the accused went beyond this limit. It seems quite clear that no serious wounds were inflicted, in spite of the use of weapons.

In order to enforce his authority in face of the united and deliberate refusal of obedience, the accused first gave a perfectly proper order that small groups of 2 to 4 men should be brought into the dressing room and there compelled, partly by force, to change their clothes. Then he ordered larger groups of prisoners, who were not only persisting in their disobedience, but were encouraging each other to continue to disobey, to be driven into the dressing room. Force, partly by the use of the butt-end of the rifle, was rightly employed against these obstinate men also. Further force was in

part necessary to get the men, who had changed their clothes, out of the dressing room and into the pit cage.

As regards the incidents of 14th October, the evidence of the witnesses shows that only in the case of the prisoner Baker is there any doubt whether the accused used or tolerated a greater amount of force than the insubordination of the prisoners justified. Baker, as he himself states, received a blow with the butt-end of a rifle, not from the accused, but from a sentry. This was because, when ordered to get down from his bunk, he did not do so quickly enough. When he did get down the accused then dealt him a further blow in the face. Owing to the confusion prevailing at that time, this matter does not appear to be sufficiently elucidated for the court to hold that a punishable offence on the part of the accused has been proved.

In all the cases included in the indictment, which relate to ill-usage in direct connection with the mutinous refusal to work on 14th October (No. 1, 3 and 4 of the indictment and Nos. 1, 2 and 6 of the supplementary indictment), the Senate has arrived at the decision to acquit the accused. The same holds good as regards the kicks and blows alleged in the indictment (No. I., 1), which relate to prisoners who have not been identified. These incidents appear to relate, not to the falling-in on 13th October, but to the measures necessary for the enforcement of obedience on 14th October.

V. No further cases of violence on the part of accused against the English prisoners of war placed under him have been proved in relation to the month of October, 1915. It cannot be established whether this, as the defence maintains, is due to the prisoners being so overawed by the accused that they at first avoided further conflicts with him. The fact is that the prisoners, after their first resistance had been broken, took up their work in the mine and that they subsequently executed it without hesitation, if with varying diligence. At the numerous inspections of the camp by supervising officers, the prisoners, as they themselves testify, brought forward no complaint of any kind, either concerning the legality or the amount of their employment in mining, or concerning their treatment by the accused, or in the mine or even concerning their lodging or maintenance. That the accused at any time prevented complaints being made by the prisoners has not in any way been shown. On this accusation (No. II., 2 of the indictment) the accused is therefore acquitted.

VI. In reality the prisoners had also no justifiable grounds for complaint about their lodging and maintenance. The lodging conditions were satisfactory and the accused endeavored with great zeal to remedy the defects of the camp, which at the beginning still required improvement. Above all he energetically attended to the welfare of the prisoners, personally arranged with the directors of the mine and the boarding contractor about their food, so that the prisoners' food, especially their meat, might be served to them in full measure and in a condition to which no objection could be taken. As a

matter of fact, their rations, as has been proved, were almost exactly the same as that of the accused and his sentries. That the food was not more strengthening and more plentiful was due to the general food difficulties already prevailing at that time in Germany. That the English prisoners, especially after the abundant conditions obtaining in their own country, suffered no serious want is shown by the fact that they frequently threw away their vegetable and meat soup, and sometimes spitted their ration of liver sausage (which was less liked than black pudding) on the barbed wire of the camp.

VII. On the other hand, in November, 1915, a series of punishable offences against English prisoners of war have been proved against the accused. He interpreted his duties as camp commandant very seriously. He was on duty from 4.0 a.m. until midnight almost uninterruptedly and did not spare himself even during a painful attack of tonsillitis. Moreover, he had not sufficient support; his staff was inadequate and unreliable. By degrees, therefore, he developed a state of nervous excitement and irritability, which was due to over exertion in the execution of his duties.

VIII. Some of the offences committed in November, 1915, which have been proved against him, were committed against prisoners who had reported sick. The medical service in the camp was under the superintendence of the doctor of the Miners' Society, Dr. Kraus, who lived in Herne. At the beginning this doctor visited the camp almost daily, early in the morning, so that prisoners, who reported themselves sick without cause, could still be sent to work in the pit with the morning shift. In consequence of this, during the early days the inducement to report sick out of pure disinclination to work was comparatively small. After some time Dr. Kraus became exceedingly busy in consequence of the scarcity of doctors, and so he ordered that prisoners, who reported sick, should be brought to his residence during his consulting hours. This took up so much time that prisoners, who were found on inspection to be fit for work, missed the whole shift. Thus numerous prisoners were induced, although they were not sick, to report themselves to the doctor, in order that they might at least escape work. This practice became so common that often there were gangs of 20 and 30 prisoners going to the doctor, of whom only isolated cases were really sick. This was bad for both the doctor and for the work which had to be done, so the accused was told to send to the doctor only those prisoners whom he himself considered to be sick. He was particularly told to take the temperatures of all prisoners reporting sick and, except where there were signs of other illness besides fever, to allow only those prisoners to go to the doctor who had temperatures which showed fever (over 37° C). It has not been proved that the accused did not properly carry out this duty of examining prisoners. In particular there is no proof that he knowingly prevented sick men from going to the doctor. He must, therefore, be acquitted on this part of the indictment (No. II, 1).

IX. On the other hand the accused has, in the following instances, assaulted prisoners who maintained that they were sick or while they were being treated temporarily by him:

(a) On 8th November he ill-used the English prisoner Jones by means of blows with the fist and kicks on the ground, alleging that he had reported sick but had been found fit by the doctor. (Case I, 6, of the indictment.)

(b) He struck the same man Jones in the face with his fist on 10th or 11th November because Jones, who had a swollen cheek, declared that he had tooth-ache. It seems that Jones is the prisoner referred to in I, 8 of the indictment, and also that it is Jones, who really is the prisoner mentioned in I, 9, of the indictment where the name is given as Walter Farror. As the last-named had not been ill-treated, the accused is acquitted of the charge in I, 9, of the indictment.

(c) At the beginning of November the English prisoner McLaren was in the sleeping room and the accused struck him with a broom, because he remained in bed on account of alleged sickness. (Case I, 10, of the indictment.)

(d) The English prisoner Cross suffered from abscesses in the lower part of the leg. Some days previously the doctor had ordered that poultices should be given him. On November 15 Cross went to the accused to get bound up and seemed clumsy while he was being bandaged. The accused in consequence got very excited and hit him with his fist. Cross fell from his stool. As he lay upon the ground the accused kicked him. As a result of his ill-treatment by the accused Cross became unable to contain himself; perhaps he also passed excrement. Later—not on the following day as accused in the indictment (I, 12; compare I, 11)—the accused ordered that on this account Cross should be given a bath. Thereupon Cross was brought into the bath-room, and, after his clothes had been taken off, was placed under the shower. He struggled and cried out loudly, and, when he wanted to get away he was again put under the shower. How long Cross was kept under the shower cannot be established with certainty. Such statements about time are usually apt to be incorrect, and in addition to this, the memory of witnesses on this, as on many other points in regard to the charges has naturally and obviously become vague. There can be no question of this shower bath having continued for an hour or more; it is more likely that the whole proceeding in the bath-room (as has been stated by the English prisoner Burrage) took only a few minutes. Further, the court has heard the definite statements of Machine-Inspector Horstmann, who knew all about the mechanical working of the shower and his evidence disproves the charge that the accused subjected Cross repeatedly to sudden changes of cold and warm water; the structural arrangements of the shower would not permit such sudden and frequent changes. The ill-usage treatment in regard to Cross of which accused is guilty is limited to the blows and kicks when Cross showed the sores on his leg. With reference to the charge of

having in addition ill-treated him in the bath-room (No. I, 12, of the indictment) he is therefore acquitted. It is also untrue that Cross became insane as a result of the treatment that he received. As his comrades have admitted, Cross had previously shown signs of mental derangement. When these signs became more apparent after the ill-treatment to which he had been subjected, he was immediately sent to the doctor at the instance of the accused and the doctor sent him back to the main camp at Münster.

(e) The accused ill-treated the English prisoner Carter by giving him a blow with his fist, because Carter had without cause reported himself sick. (Case I, 15, of the indictment.)

(f) In November the accused also ill-treated the English prisoner Briers in the same way, because Briers remained in bed on account of alleged sickness. That the accused on this occasion used a stick has not been proved. (Case I, 18, of the indictment.)

(g) In November the accused hit the English prisoner Brooks with his hand when Brooks reported sick. (Case 3 of the supplementary indictment.)

(h) On the same day at sick parade the English prisoner McDonald received a blow in the face from the accused's fist. (Case 4 of the supplementary indictment.)

(i) About the same time the English prisoner Ford was struck by the accused because he had not gone to work on account of alleged sickness. It has not been proved that on this occasion the accused used a stick or a piece of rubber tubing. (Case 5 of the supplementary indictment.)

(k) Similarly about this time, the English prisoner Gartland was ill-treated by the accused, because one morning he had not gone to work on account of alleged sickness. The accused gave him a blow with his hand and also struck him with his sheathed side-arm. (Case 7 of the supplementary indictment.)

X. In addition the evidence has proved the following further cases of ill-treatment of English prisoners by the accused:—

(a) On 13th November, Jones, on his way to the latrine, met the accused and brushed him on the arm. The accused thought that this was done intentionally and got excited about it. He knocked Jones down with his fist and then kicked him. (Case I, 7, of the indictment.) This case is the same as that dealt with in No. I, 23, of the indictment.

(b) The prisoner Abel received a blow from the accused in the refreshment room. It has not been adequately proved that this blow was given with a stick. (Case I, 13, of the indictment.)

(c) Once when the prisoner Gartland complained to the accused about having been struck by some miner in the mine the accused boxed his ears. (Case I, 19, of the indictment.)

(d) In November the prisoners McDonald and Birch escaped from the camp. A few days afterwards they were brought back again. Immediate-

ly on their return the accused, who was very angry at their flight, ill-treated them in the detention cell. He used his fist and his rifle-butt. According to the account of McDonald the ill-treatment of both prisoners was committed at one and the same time. (§73, Penal Code.) (Case I, 16, of the indictment.)

XI. Apart from the cases already mentioned the accused is acquitted on the following charges:—

(a) He is alleged to have dragged the prisoner Jones (No. I, 5, of the indictment) out of bed when he was lying there on account of alleged sickness. In his evidence Jones himself has not been able to establish that he was ill-treated or that the accused struck him with a broom or stick.

(b) No sufficient evidence has been adduced to prove that the prisoners Evans (No. I, 21, of the indictment), Withers (No. I, 22, of the indictment), and the unnamed prisoners mentioned in No. I, 14, of the indictment were ill-treated by the accused.

XII. The accused is, therefore, found guilty in fifteen cases relating to the year 1915. While he was commandant of the prisoners' camp at Herne he deliberately assaulted English prisoners of war who were placed under him. In one case he is guilty of making illegal use of weapons. These constitute offences against §§122 Par. 1, 55, No. 2 of the Military Penal Code. There have been offences respectively as regards the prisoners Gothard (I, 2 of the indictment); McLaren (I, 10); Cross (I, 11); Abel (I, 13); Carter (I, 15); Briers (I, 18); Brooks (No. 3 of the Supplement); McDonald (No. 4); and Ford (No. 5). There is a further offence against the prisoner McDonald and at the same time the prisoner Birch (No. I, 16). There are two further cases regarding the prisoner Gartland (I, 19, as well as No. 7 of the supplement). There are three further cases in relation to the prisoner Jones (I, 6-8).

In all these fifteen cases the Senate has found the accused guilty of separate crimes which are punishable (§74 Penal Code). No continuous intention of ill-treating the prisoners placed under him has been found. On the contrary, his conduct in all these cases was due to momentary annoyance or excitement, especially when he was concerned with men who were reporting sick without any or any apparent reason.

XIII. Apart from these cases of ill-treatment, the accused is charged with having thrown stones at the prisoner Briers and also at two other prisoners, whose names cannot be ascertained. No reason for so doing has been discovered. That he wished to hit the prisoners, as the indictment (I, 17) charges, or that he hit one of the other two prisoners has not been proved. But his conduct, which was apparently intended to warn or intimidate the prisoners, was none the less a continuous treatment of subordinates contrary to the regulations and constitutes an offence against §§121 Par. 1, 55, No. 2, Military Penal Code.

XIV. The evidence has proved that the accused not only used the ex-

pression "Englischer Schweinhund" ("English pig-dog") in relation to the prisoner Parry (No. 8 of the Supplement) as already stated above, but that he also applied such expression to two other prisoners of war (No. III of the indictment) who cannot be more closely identified. Thus there are three cases in which the accused insulted subordinates while carrying out his duties. This is an offence against §§121 Par. 1, 55, No. 2, of the Military Penal Code and §74 of the Imperial Penal Code.

XV. In deciding the measure of punishment the Senate has taken the following considerations into account:

Apart from the offences of which he is now found guilty the accused bears an excellent and blameless character, both as a citizen and as a soldier. This holds good especially in regard to his later term of military service. He was removed from his command as soon as his offences against prisoners became known in higher quarters, namely, on 26th November, 1915. On 5th April, 1916, he was sentenced by a court-martial, partly on account of the cases of ill-treating prisoners of which he now stands convicted. But afterwards he won back by a loyal performance of his duties the trust and appreciation of his superiors. He again reported himself at the front and during the years 1916-1918 he took part in the battles on the Western front. He earned the distinction of the Iron Cross of the II class, and on 17th April, 1918, he was promoted Sergeant. When he was commandant of the prisoners' camp at Herne, there was also no lack of zeal. He was especially indefatigable as regards the arrangements for boarding and lodging the prisoners entrusted to him. Above all it has to be realized that he had had no adequate instruction in his duties and that his staff of sentries was inadequate both as regards quality and number. He was thus placed in an extremely difficult position, a position which was beyond his strength and abilities. The evidence has conclusively shown that his duties were rendered much more difficult, especially at the beginning, by the conduct of the English prisoners. Little as his failings can be excused, yet they can be explained to a large extent by the unstinting way in which he devoted his energetic personality to his appointed task. In carrying out his duties he spared himself least of all. He developed a state of irritability and excitement, which almost amounted to an illness, and this more and more undermined his self-control. This is shown clearly by the increasing number of offences towards the end of his period of command.

For all that, there can be no question of detention in a fortress in view of the nature of his offences, especially those committed against prisoners who were undoubtedly sick. On the contrary a sentence of imprisonment must be passed so far as crimes against §§122, 55, No. 2 of the Military Penal Code are concerned.

The ill-treatment of the prisoner Cross is considered to be the gravest case. For that there must be a punishment of 3 months' imprisonment. For each of the other cases of ill-treatment there must be 2 months' imprison-

ment. For the offence of throwing stones at prisoners there must be a sentence of three days medium arrest and for each case of insulting prisoners a sentence of a week's light arrest. In accordance with the terms of §54 of the Military Penal Code and of §74 of the Imperial Code a comprehensive sentence has to be passed to include these separate sentences. The period of detention during the enquiry will be counted as part of the term of imprisonment now ordered; this is in accordance with §60 of the Imperial Penal Code.

The decision of the Court as to the costs is based upon §§497 *et seq.* "St. P.O." (§Criminal Procedure Rules) in conjunction with §4 of the Law of 24th March, 1920 (Imperial Code I.S. 341).

(Signed) SCHMIDT,
SABARTH,
DR. PAUL,
SCHULTZ,
KLEINE,
HAGEMANN,
DR. VOGT.

The present copy agrees with the original document.

(Signed by)

The Clerk of the Court of the Second
Criminal Senate of the Imperial
Court of Justice.

(Seal of Court).

BORCHARD.

JUDGMENT IN THE CASE OF EMIL MÜLLER

Rendered May 30, 1921

IN THE NAME OF THE EMPIRE

In the criminal case against Emil Müller, barrister, and Captain in the Reserve (retired), of Karlsruhe, born on 24 July, 1877, in Mannheim, for crimes and offences against sections 122, 143, 55, 59, 1, 121, 7, of the Military Penal Code and section 74 of the Imperial Penal Code,

the second Criminal Senate of the Imperial Court of Justice at a sitting held in public on 30 May, 1921, at which there took part as

Judges,

The President of the Senate, Dr. Schmidt, and the Imperial Justices, Dr. Sabarth, Dr. Paul, Backs, Dr. Schultz, Dr. Kleine, Hagemann,

as officials of the Public Prosecutor's Department,

The Oberreichsanwalt, Dr. Ebermayer and Lingemann, Counsel of the Public Prosecutor's Department,

as Clerk of the Court,

Risch, official,

after oral evidence.

The accused is sentenced to six months' imprisonment for having ill-treated subordinates in nine instances; for having tolerated such ill-treatment in one instance; for having dealt with subordinates in four instances contrary to the regulations; and for having insulted subordinates in two instances. On the remaining charges he is acquitted.

The costs of the proceedings in respect of the charges, for which sentence has been passed, are imposed upon the accused, and those in respect of the charges, on which the accused has been acquitted, are imposed upon the Imperial Exchequer.

The Imperial Exchequer is also to bear the whole of the expenses connected with the first-mentioned cases, including the necessary expenses of the accused.

By Right

REASONS OF THE DECISION

In March, 1918, the accused, who was then a captain in the Reserve, commanded the II Company of the Gelsenkirchen Landsturm Battalion. In this capacity he was, in the beginning of April, placed in command of a camp for English prisoners of war at Flavy-le-Martel, which was being put in order by the battalion. He shared these duties with the commander of No. I Company, but each company took over a separate portion of the camp, and took up its quarters with the prisoners of war assigned to it. No commandant of the camp as a whole was appointed. The duties of the company commanders consisted solely in housing, feeding and supervising their prisoners, and in arranging, day by day, to provide the troops requisitioned for outside work. They had nothing to do with the regulation of this work itself or settling the hours of labor. This was the business of the commander of the battalion and of his subordinates. The company commanders took over a camp which was found empty. In the camp there were barracks and other buildings. These were the only buildings in the neighborhood. The company commanders had no choice of other buildings.

The accused held this position from the beginning of April until 5th May, 1918, that is to say, for a period of about five weeks. On the 4th May he was given leave, as he needed treatment for neurosis of the heart. He left the camp on 5th May and never returned.

The camp had shortly before been taken from the English during the so-called March offensive, and had previously been used by them as a camp for the temporary reception of German prisoners of war. It was in a wretched condition. It lay in a marshy and completely devastated district immediately behind the fighting line, where everything was still in constant movement. During the time the English had been in possession of it, it was unfit for human occupation. The witness Roeder, who at that time and indeed at the end of January and beginning of February, 1918, had taken part in the

war on the English side, and had often come there as interpreter, gave reliable evidence that the accommodation had been defective in the extreme. In the two residential barracks, which together afforded room for some 300 prisoners only, double that number had been quartered. These barracks had a muddy, unboarded floor. There were no beds, but only some rotten wood-wool, which was infected with vermin. Windows and roofing were leaky. There were but two small so-called trench stoves so that the German prisoners had suffered from the cold in winter. The latrines were as primitive and unwholesome as can be imagined. There was a complete absence of sanitary arrangements, and also almost a complete absence of facilities for cooking and washing as well as of rugs. As a consequence of all this, numerous prisoners had become sick with influenza and intestinal troubles, especially with dysentery. Many had died. All had complained of the plague of lice. Even the English guard had suffered heavily. An English doctor had endeavored in vain to remove these defects.

The accused found the camp in precisely this condition, and had to do his best with it. The position was rendered more difficult for him because he was obliged to quarter over 1,000 men in the barracks as fresh prisoners were constantly arriving. Further, all the wells round about were ruined. The food allotted was insufficient, and during the first days he had no medical assistance. Finally he was obliged to detail daily very many men for heavy outside work, and the prisoners were already in a quite exhausted condition when they came under him. They were inadequately equipped with uniforms on arrival, as also with underclothes, rugs and so on. The accused at once set energetically to work to effect an improvement. On the one hand he sent many memoranda to his superiors emphatically demanding delivery of supplies in order to draw their attention to the conditions, and he made pressing demands for what was wanting (his report of 20th April, 1918, particularly is worthy of notice), and by urgent representations, both verbal and in writing, he in fact obtained many things. For example, medical assistance was allotted to him as early as the third day. Furthermore, he himself took in hand the improvement of the camp as far as was possible. He formed a working party from what labor was left in the camp. He had wells sunk, stoves installed, proper latrines laid out, cooking and washing places provided, and he fought the plague of lice first by the means of powder and finally by getting a disinfecting station set up. He also succeeded in getting some improvement in the food, and occasionally he got the outside work made easier. On one occasion he procured soap as well as extra food and luxuries from Belgium. On another he managed to get hold of some clothing which was not intended for his men at all. Several times he procured some horse-flesh, and he detailed those prisoners, who were particularly weak, for duty in the kitchens and bakeries where they could get more food. He showed thereby that he had sympathy with his prisoners and that he was not insensible to their real needs.

In spite of all this the position of the prisoners became continuously worse. Food remained insufficient. (The causes of this lay in the shortage of nourishing food prevailing at that time owing to the blockade.) The strength of the prisoners had not grown equal to the strenuous outside work. This work was necessitated by the fighting and, in determining it, the accused had in general no influence. Most of the prisoners grew weaker and weaker and they often collapsed at their work or on the march to their place of work as well as at the roll-calls in camp. Furthermore, infectious diseases broke out in the shelters, which were already overrun with lice and infected with germs of disease. The prisoners did not keep themselves clean and were unable to change either uniform or underclothing. At first there was not any sufficient quantity of disinfectant. Thus nearly all the prisoners suffered to a great extent from lice and ulcers, many also from intestinal catarrh. Finally dysentery, which already in the time of the English had been rampant there, broke out again, at first in isolated cases and then it spread rapidly. This epidemic developed after the departure of the accused in such a manner that a large proportion of the prisoners had to be transferred into the interior to Stendal, where many more died from it. In the camp itself the number of deaths from dysentery is said to have been considerable, but not until after the departure of the accused.

But no responsibility of any kind rests upon the accused for this wretched aggravation of the conditions. As has been stated above, he had perceived the danger in good time and had done everything to prevent it. That in this respect he attained but little was due to the circumstances which were beyond both him and also his immediate superiors. It was not possible at that time to take adequate care of the troops' and prisoners' camps close behind the battle zone. Nevertheless, in a short time the accused did an astonishing amount towards improving his camp and he laid the foundations, whereby in the course of the succeeding months (when a quieter period came along) this camp could be converted into a relatively well-equipped prisoners' camp. Later, not only his superiors but also the medical inspectors repeatedly acknowledged this to be so. He has the reputation of having been an able, energetic and conscientious officer, who always carried through the tasks which were imposed upon him and who always maintained good order. His immediate superior, the commander of the battalion, Major v. Bomsdorf, confirms this in particular. It cannot be disputed that as camp commandant he displayed these characteristics and that in this capacity he showed meritorious industry. In particular he cannot be reproached with not having endeavored in good time to get the camp free from epidemics. Any such an attempt at that time would have been hopeless. The cases of sickness from dysentery were then still sporadic; there was no question of a real epidemic. It has been conclusively proved that during the whole period of his command at the camp there was only one case of death among the prisoners under him and that this took place shortly before

his departure and was not attributable to dysentery. The neighboring company in the camp was in a similar condition. It is true that intestinal catarrh was already very prevalent as well as lice, ulcers and a general loss of vigor. These troubles were, however, universal in the camps of that district, and it was on this account that steps could not reasonably be taken for providing fresh quarters, a step which at that time would have been scarcely possible on any large scale.

So far, therefore, as the general conditions in the prisoners' camp at Flavvy-le-Martel are concerned, the accused must not only be acquitted of any blame, but it should be placed on record that the zeal with which he carried out his duties deserves high praise. On the other hand, the same cannot be said about the way in which he treated the prisoners individually or his methods of maintaining order. It was precisely owing to his zeal and his natural tendency for an impetuous and rigorous action (combined with a serious condition of nervous overstrain) that prompted him to commit a series of excesses, which constituted a breach not only of his official duties but also of the criminal law. These excesses cannot be justified by the circumstances. His attitude towards the prisoners was hard and over-severe, sometimes even brutal, and in other cases it was at least contrary to regulations. He treated them not as subordinates, and it was as such that he ought to have regarded his prisoners, but he treated them more like convicts or inmates of penitentiaries. His methods were those of the convict prison or such like institutions, although even on this standard his conduct could not be tolerated. The court has heard of his ill-treating prisoners by hitting and kicking them. He allowed his staff to treat them in the same manner. Insults were hurled at the prisoners and there was other ill-treatment which was contrary to the regulations. He habitually struck them when he was on horseback, using a riding cane or a walking stick; several prisoners have stated that they were struck with a riding whip, but this must be a mistake as the accused did not possess one.

In detail the following instances are held proved:

I. Ill-treatment

1. According to the evidence of the witness Lovegrove the accused when on horseback struck the prisoner Millsom across the shoulders with his riding cane. Roll-call was being taken and Millsom marched past slackly and had a pipe in his mouth. Millsom himself is no longer alive.

2 and 3. In at least two cases the accused ordered prisoners to be bound to posts. In the first case, which he himself admits, this was done to a man whom he suspected of having been ringleader in an intended mutiny. The accused asserts that he made this man stand for about 10 minutes and ordered all the others to march past him; this being intended as a warning to the others. It has not been possible to establish the details of this incident. The fact remains, however, that, as the witness Thornton has said, there

never was any question of a mutiny, but only an arrangement to make a joint complaint, in the first place to the accused himself, and if opportunity arose to his superiors. The accused had found this out by questioning the prisoners concerned through an interpreter. The court cannot accept that he seriously believed from what he heard that a mutiny was intended.

The accused admits that there may have been a second case of tying a prisoner to a post, but he will not call it to mind more precisely. It remains doubtful whether this second occasion related to a man who had stolen some oats (witness Ray) or to one of the prisoners who evaded work (witness non-commissioned officers, Biela, Rose, Ellis, Nelms and Sharp). It is possible that there were several such incidents as the several descriptions vary a good deal from each other. But only one case can, however, be held to be proved. Biela has given evidence that in this case, the accused ordered the prisoners to be tied up for three days, two hours each day, and that the accused himself showed Biela how it was to be done. Biela then modified the severity of the punishment, entirely on his own accord, and omitted the third day's tying up altogether.

It has not been established that in these cases the accused either ordered or allowed that these prisoners should be so tied up that they were compelled to gaze continuously in the sun. If anything of the kind actually took place, it may have been because the non-commissioned officers or soldiers who carried out the order acted on their own responsibility; there is no proof that the accused had any knowledge of it. However, even without this inhuman method of carrying out the order, the tying up remains a very severe measure which cannot be justified in any way. This form of service punishment was done away with by an Imperial decree of 26th May, 1917, and certain remarks of the accused seem to show that this decree, which had been duly published and was much discussed, was not unknown to him. He probably ordered this tying up, not so much as a punishment but rather as a means of securing order generally and of putting a stop to insubordination. Of this, however, so far as the court can see, there was no reasonable fear, and the employment of this severe measure cannot be considered otherwise than as a case of ill-treatment under the conditions then obtaining.

4. On one occasion the accused struck, apparently only with his hand, the interpreter Sacof, because this man reported to him a complaint of another man who was asking for more bread.

5. The accused while on horseback struck a prisoner who was suffering from a bad foot. At roll-call this prisoner had raised his leg to show it to the accused, but the accused hit him across his leg with his riding cane. The man cried out, fell down and had to be carried into barracks (witness Stiles).

The witness Drewcock gave evidence as to further cases of ill-treatment. They happened in a tent-camp which was put up about the middle of April at the railway station and was intended for use by prisoners who were on

their way elsewhere. The accused was not appointed commandant of this tent-camp, but the supervision of the prisoners' maintenance there had been transferred to him. He undoubtedly had duties there and during this time he had authority over the prisoners in the camp. In carrying out these duties:

6. He thrashed the prisoner Batey with his walking-stick. This man became ill while at work outside the camp and, although violently attacked by the sentries who did not believe in his inability to work, he refused to work any further. The sentries reported him to the accused on their return and Batey repeated that he was ill and emphatically asked for a doctor. The accused got furious over this, as he thought that Batey was a malingerer; he then belabored him in the manner already stated.

7 and 8. In two cases at least the accused struck with his stick prisoners who were asking for improved conditions, particularly for more food. The accused excuses himself for doing this by stating that the prisoners in the tent-camp had frequently obtained double rations surreptitiously. This, however, cannot justify his violence against prisoners making requests to him.

9. The accused once struck Drewcock at roll-call when he (the accused) was riding in amongst the prisoners, who did not at once give way to him. He struck him across his wounded knee with his riding cane so hard that an abscess developed and later had to be cut. The accused could not have foreseen this, for the wounds on Drewcock's knee were not visible to him. But the blow must have been a heavy one.

In general the accused has admitted that it was his practice to enforce discipline, in cases of irregular behavior by means of light blows. He will not as a rule tax his memory about the details. He explains, however, it would have been impossible to attain rigid discipline if he had tolerated any lengthy explanations, especially as he and the prisoners could not understand each other's language. There may be some truth in this and there were no doubt serious difficulties in commanding such a camp. But nevertheless the accused never had any right to get over these difficulties by means of endless acts of violence.

Three further similar cases (namely those under 1, 2 and 5 of the indictment) come under the heading of treating prisoners contrary to the regulations; see under IV, 1 to 3 later. The charge under 1, 4, of the indictment is not proved. The accused is alleged to have struck the witness Lawrence in his face with the handle of a riding whip. Lawrence alone gives evidence of this, but Lawrence has not impressed the court as a credible witness. He has shown strong animosity, he has exaggerated everything far beyond the accounts of the other witnesses and he has told of monstrous happenings. For example he asserts that he saw the accused dismount at the burial of a prisoner, get down into the open grave and snatch away from the dead man the rug in which he was shrouded. This is demonstrably untrue. While the accused was at the camp one burial only took place in the camp and this by

orders of the accused was conducted in an absolutely proper manner. The corpse was placed in a coffin and the accused had ordered a wreath to decorate it.

II. *Toleration of ill-treatment by Subordinates*

Here only one instance has been proved with certainty. A prisoner moved in the ranks while at evening roll-call. He was harshly rebuked by Sergeant-Major Schubert. The accused saw the incident and called out something to Schubert who thereupon knocked the prisoner down with his fist. The prisoner was then carried away (witness Stiles). It is to be assumed that the accused at least tolerated and approved of this brutal treatment, even if it was not done on his orders.

On the other hand his guilt is not proved in connection with a second instance. A sentry guard was driving the prisoners out of the barracks to roll-call one morning and hit the witness Lovegrove on the hip with the butt-end of his rifle, perhaps because he did not come out sufficiently quickly. Lovegrove certainly thinks that he saw the accused, who was standing close by, laugh at this. But he can easily have been mistaken, and in any case it is not clear whether this ill-treatment had not taken place before the accused either noticed it or could prevent it. Therefore no case of knowingly permitting this when he could have prevented it (section 143 Military Penal Code) can be established here.

III. *Insults*

The witnesses Peace and Sacof declare that the accused generally abused and threatened the prisoners a good deal and that he frequently spoke of them as "Englishmen" and "Schweinhunde" (pig-dogs). This however is too vague to be regarded as proof of any actual insulting of particular individuals. But the witness Thornton reports two instances which are different. The accused said of a sick prisoner who was found to be in a dirty condition: "Away with the English 'Dreckschwein' (mire-pig)" (or words to that effect). These were serious personal insults and were wounding to national feeling and they are all the more serious because both the prisoners concerned were entirely blameless. For in the first instance the man had intestinal trouble and had been refused permission to leave the ranks at roll-call to go to the latrines and it was in consequence of this that he was in a filthy condition. The second instance concerned a prisoner who was seriously ill, half eaten by lice, and was to be washed by doctor's orders. He died the very next morning. There was no reason to insult men in so unhappy a condition, least of all for such insults to come from an officer and a man of education.

IV. *Treatment of Subordinates contrary to Regulations*

1. According to the statement of the witness Lovegrove the accused once saw two recumbent sick men lying down; they were so weak that they could not stand up before him and were groaning pitifully. But the accused is

said to have got angry and impatient and to have kicked them. This is not construed as a case of ill-treatment, although it is thus alleged in the indictment. There is a possibility that the accused did not wish to hurt the men, whose sickness he apparently did not yet believe to be real, but that he only wished to secure that his order to get up was immediately obeyed. It is not clear that the kicking was particularly violent or painful. Clearly, however, in each instance this constituted a treatment of the sick contrary to regulations. These assaults are considered therefore to amount to one offence against Section 121 of the Military Penal Code.

2. While Lovegrove himself was once marching past the accused, he did not turn his head sufficiently, so the accused pulled him out of the ranks by the ear and Lovegrove was then, according to his story, pushed to and fro. This also, despite the indictment, was only a case of treatment contrary to regulations, namely, merely an irregular attempt to put a prisoner right without any intention to ill-treat him.

3. The same holds good about the accused riding on horseback into the prisoners. (I, 5, of the indictment.) The accused admits that he liked, as soon as he appeared at roll-call, to ride quickly up to the ranks. He thought this was a suitable way of ensuring proper respect for himself and of making the prisoners attentive. According to the evidence of almost all the English and also of some German witnesses, he frequently rode so far into the ranks, that the ranks were broken. The prisoners scattered on all sides and many, who could not get out of the way quickly enough, were thrown down by the horse. Such excesses when riding up to a body of men is altogether contrary to regulations and is to be condemned. This is also the opinion of the military expert, General v. Fransecki. In the present case this has not been construed as ill-treatment, solely because no actual riding down or breaking up the ranks was intended and because as a matter of fact nobody was injured. The accused was prompted purely by excessive keenness. The several instances constitute one continuous action.

4. Finally, the accused, likewise acting continuously, often forced work on sick prisoners. When he could not muster the full complement of workers demanded or when supplementary demands arrived, he forcibly sent everyone out, even those entered as sick or who were obviously incapable of work; he tolerated no opposition. This is stated by numerous prisoners (Sacof, Goldberg, Tingle (medical orderly), Lovegrove, Peace, Abrahams, Nelms and Brett in complete agreement), and the German witness Benker confirms it. The accused cannot answer this by pleading that he considered many of these alleged sick to be malingerers or that his strict orders obliged him to send out the numbers of workers that were demanded. For the first excuse contradicts the evidence of the witnesses, who declare that there could have been no doubt about the sickness of many of the men in question. With regard to the second excuse the military advisers v. Kuhl and v. Fransecki declare that there was certainly a great and urgent need of

workers and that the necessity for a scrupulous supplying of the demands for them had been enjoined upon the commandants of the camp. But they had been expressly told to avoid including weak or sick prisoners, because the maintenance of the prisoners in a healthy condition was just as much to the interest of the administration of the army as it was in that of humanity. These considerations the accused in his excessive zeal constantly ignored and that is an offence which it is not easy to estimate, especially when the wretched health conditions in this camp are considered.

The case mentioned in IV, 1, 6, of the indictment must be excluded here. The witness Ray was made to chop wood for an hour, because, owing, it is said, to weakness, he did not salute. It was not certain that Ray was really too weak for this kind of penal work or that he was ordered to do it by the accused. Ray, who had received the order from Sergeant-Major Schubert, only supposes this, but the sergeant-major may have been acting independently.

Further, it is also not proved that the accused refused medical assistance to sick prisoners (IV, 3, of the indictment). His plea that he sent the men, who reported sick, to the medical authorities has remained unanswered.

The charges made in IV, 2, 4, and 5 have been satisfactorily explained. If prisoners washed their faces in dirty water, this was not because the accused directed them to do so, but because they did not trouble to change the water in the trough at the proper time and it was at all times possible to change this water. As regards the dying man who was covered with vermin, water was poured over him and he died the following day; but this treatment was given under medical orders and in a considerate way, though it is true that he was insulted by the accused while being washed. (See above under III.) The treatment itself did him no harm (witness Terlinson). The accused took some small photographs of the camp, especially of the latrine when the prisoners were using it, to commemorate his service as commandant. He did this with a feeling of pride in the improvements effected by him. He might well have done this in a less objectionable manner. But in taking the photographs he had no intention of insulting the prisoners. If several prisoners thought that in doing this the accused was mocking them, this was due to their preconceived idea that the accused was animated by feelings of spiteful malignity towards them. This preconceived idea about the accused has shown itself on other occasions (looking into the mortuary; behavior when complaints were being made, &c.). But the court has found no definite facts to prove any such feelings on the part of the accused. Accordingly on all these points (as well as those under 1, 4, and II, 1, of the indictment) the accused is acquitted. The charge in IV, 6 (the tying up of the man who stole oats) has been decided as a case of ill-usage (see above I, 2/3).

So far as the accused is guilty his offences have throughout been com-

mitted in his capacity of superior towards his subordinates and while he was carrying out his duties. He served continuously in the camp.

Thus it has been definitely established:

That the accused was at the prisoners' camp at Flavy-le-Martel from the beginning of April until 5th May, 1918, and that the following separate incidents took place:—

I. In nine instances he deliberately kicked or struck English prisoners of war, his subordinates, or otherwise physically ill-treated them or caused injury to their health.

II. In one instance, as commanding officer of a military detachment, he allowed one of his subordinates, a non-commissioned officer, deliberately to strike an English prisoner of war with his fist. The accused thereby with knowledge permitted the committing of a criminal act, which he could have prevented, and which he was officially bound to prevent.

III. In two instances he insulted English prisoners of war, his subordinates, by using words of abuse.

IV. In four instances he is guilty of treating English prisoners of war, his subordinates, contrary to the regulations and as in the cases I to IV, he did this whilst carrying out his duties.

He is thus liable to punishment for crimes and offences according to Section 122, paras. 1, 143, 121; paras. 1, 55⁽²⁾, 53, 7, of the Military Penal Code; Section 74 of the Imperial Penal Code (*cf.* the Imperial Law of 18th December 1919 and 24th March 1920, which deals with the prosecution of war crimes and offences).

In deciding the extent of his punishment the following factors have had to be taken into consideration:

The accused is in no wise guilty to the extent which might appear from the results of the preliminary proceedings. The trial before this court has vindicated him on many points; in others it has proved that his offences were not so serious as had been expected. As has already been stated, he has been an able officer, who faithfully tried to do his duty; who always strove to win the appreciation of his superiors, and who had hitherto secured such appreciation in full measure throughout his long years of war service. Then, however, he was suddenly confronted with an unusually difficult situation. He was obliged to take over the, to him, novel position of commandant of prisoners of war, and this in one of the most disturbed battle areas, close up against the front, in a devastated and unhealthy neighborhood and at a time of most severe scarcity of all necessities of life. The accused had, so to speak, to create out of nothing, a camp to house the unending stream of prisoners. All these burdens were placed upon him at a time when he was already almost breaking down as a result of war strain and an old heart complaint, and was afflicted with serious nerve trouble (witness Kessler, doctor of medicine). In spite of all this, he showed himself, generally speaking, equal to his task and carried out the administration of the camp as such as well as possible.

But in his personal treatment of the prisoners (and for this his temperament was less suited), he erred seriously. Instead of earning the prisoners' confidence, he got a reputation among them for being a tyrant and a nigger-driver. But here, too, his excesses were only due to that military enthusiasm which worked him up to an exaggerated conception of military necessity and discipline. He made insufficient allowance for the special conditions in which prisoners in war-time find themselves. He showed himself severe and lacking in consideration but not deliberately cruel. His acts originated, not in any pleasure in persecution, or even in any want of feeling for the sufferings of the prisoners; but in a conscious disregard of the general laws of humanity. Had this not been so, he would not have generally troubled so much about the well-being of the prisoners, and his acts of illtreatment would have caused more serious injury to those concerned than has been proved to have occurred. Not a single case has had really serious consequences.

It must be emphasized that the accused has not acted dishonorably, that is to say, his honor both as a citizen and as an officer remains untarnished. None the less the choice given by law (Sections 121, 122, 55 of the Military Penal Code) between imprisonment and detention in a fortress, cannot be decided in favor of the latter. There has been an accumulation of offences, which show an almost habitually harsh and contemptuous and even a frankly brutal treatment of prisoners entrusted to his care. His conduct has some times been unworthy of a human being: these factors the court considers decisive. When he mixed with the prisoners there was seldom anything but angry words, attempts to ride them down, blows and efforts to push them out of his way: he never listened patiently to their grievances and complaints: he had no eyes for their obvious sufferings: he cared little for the individual, if only he could secure order among the prisoners collectively. It is impossible to consider his conduct as a number of separate instances of rash actions which he regretted: it appears rather as a deliberate practice of domineering disregard for other men's feelings. It is no justification that his methods were intended to secure discipline. It is also no excuse that the conditions had been brutalized by war. The only possible excuse for him was that he was over-excited: that he feared disorder, and that he did not know how to handle men. But even so, it must be recalled that he had under him prisoners who were peculiarly unfortunate, sick and suffering men who deserved protection. When these prisoners offended against the regulations, the cause for the most part lay in their miserable condition. Such men in such conditions were not likely to be really refractory. The accused should have avoided being unduly severe; and above all he ought not to have indulged in such reprehensible means of punishment as blows, kicks, tying-up and such like. Such conduct dishonors our army, and is singularly unfitting in a man of his education and military as well as civilian position.

Therefore it seems to the court that detention in a fortress is too light a sentence to follow such an accumulation of offences.

The most grievous mistake of the accused, having regard to the lamentable health conditions in the camp, is considered to be his compelling of sick men to work (under IV, 4). For this there must be a sentence of 2 months' imprisonment. For the other offences there will be:

Under I, 2 and 3, 5, 6, }
Under II, 1 and under IV, 3 } each 45 days' imprisonment.

Under I, 1, 4, 7 and 8 each one weeks' arrest: Under I, 9, two weeks' arrest, these cases being considered as less grievous:

Under III, 1 and 2, and under IV, 2, each one week's arrest: and
Under IV, 1, two weeks' arrest.

Out of these separate sentences there will be a total sentence of 6 months' imprisonment in accordance with Section 74 of the Penal Code and Section 54 of the Military Penal Code. In respect of the other charges the accused is acquitted.

The costs are regulated in accordance with Sections 497, 498, para. 1, in conjunction with Section 4 of the Imperial Law for the Prosecution of War Crimes and Offences of 24th March 1920.

(Signed) SCHMIDT,
SABARTH,
DR. PAUL,
BACKS,
SCHULTZ,
KLEINE,
HAGEMANN.

The present copy agrees with the original document.

The Clerk of the Court of the 2nd
Criminal Senate of the Imperial
Court of Justice.

(Seal of the Court.)

BORCHARD.

JUDGMENT IN THE CASE OF ROBERT NEUMANN

Rendered June 2, 1921

IN THE NAME OF THE EMPIRE

In the criminal charge against Robert Neumann, workman, of Güstow, Ramdow District, at present under detention pending inquiry, born 11th February 1891 in Dombrowken, Culm District, charged with crimes against §§1, 53, 54, 55, 122, 121, of the Military Penal Code and §74 of the Imperial Penal Code.

The Second Criminal Senate of the Imperial Court of Justice, at a Sitting held in public on 2nd June 1921 at which there took part as Judges—

The President of the Senate, Dr. Schmidt, and the Imperial Justices Dr. Sabarth, Dr. Paul, Backs, Dr. Kleine, Hagemann, Dr. Vogt,

as Officials of the Public Prosecutor's Department

The Oberreichsanwalt, Dr. Ebermeyer, as Clerk of the Court
Risch, official,

after oral evidence:

The accused is sentenced to six months imprisonment on account of twelve cases of ill-treating subordinates and insulting a subordinate.

On other charges he is acquitted.

The period of detention pending the inquiry is to be included in the sentence passed.

The costs of the proceedings are imposed upon the accused as regards those charges on which he has been found guilty and upon the Imperial Treasury as regards the charges on which he has been acquitted. The Imperial Treasury is also to bear in the first mentioned cases all expenses, including the necessary expenses of the accused.

By Right

REASONS

I. The accused is a trained soldier. He fought during the war on the Eastern front, was wounded in the year 1915 near Warsaw and, after his discharge from hospital, he was reported fit for garrison duty and was detailed to a Landsturm battalion at Altdamm. He was sent from there on 26th March, 1917, to guard prisoners of war at the prisoners' camp at the chemical factory, Pommerensdorf. 150-200 prisoners of war were housed there and among these were about 50-60 Englishmen who were employed in the factory, particularly in filling, weighing and loading sacks of phosphate. The non-commissioned officer Trienke was in command of the detachment.

The accused is charged with having physically ill-treated English prisoners of war during the period 26th March to 24th December, 1917, and in one instance of having also insulted them by calling them "Schweinhunde" ("Pig Dogs"). Those English prisoners were his subordinates and his acts were committed in the execution of his duties in guarding them. The accused denies the charges. He says that here and there he may have hit one of the prisoners with the butt of his rifle in order to make him work. In this he considers himself to have been justified as the English prisoners were often refractory, in marked contrast with the Serbs and Russians. To some extent this conduct of his was on direct orders from his superiors. This was especially the case on 2nd April, 1917, when the prisoners, about 24 men, allotted for the night shift, deliberately refused to go to work. In order to compel obedience, the non-commissioned officer Trienke, acting on the instructions, as he assumed, of the camp commandant in Altdamm,

ordered the sentries to fall in and attack. This order was carried out, and the accused admits that while this was being done he struck one of the prisoners (Florence) with his fist. Beyond that he says that he ill-treated nobody. He claims to have acted strictly according to regulations. He absolutely refused to tolerate breaches of discipline. He has not been able to recollect details.

In this trial a great deal of evidence has been heard. Twenty-five English witnesses, all former prisoners at the Pommerensdorf camp, have been examined orally before this court; four others were examined at Bow Street Police Court in London. In addition the court has heard 14 German witnesses who knew the facts from personal experience, some as former sentries and others as officials at the chemical factory. On this evidence the court has come to the following conclusions:

The complaints of the English prisoners that they were inhumanly and brutally ill-treated at the Pommerensdorf working camp are unfounded or at least exaggerated so far as they are directed against the accused. Many witnesses have asserted that the accused took special pleasure in constantly hurting them. This accusation particularly has no foundation. There can be no question of this in view of the evidence. Neumann was a conscientious soldier, determined to do his duty within the limits of his orders. He sometimes went too far in this enthusiasm to do his duty, but any tendency to be brutal was far from his nature. The witness, Erdmann, who from 1915 was an inspector in the Pommerensdorf factory, emphatically states that Neumann never did anything to a prisoner who did his work properly. The other German witnesses, who had the opportunity of seeing the accused at work in Pommerensdorf, unanimously agree with this opinion. To some extent the English evidence supports this view because the witness Benson in his examination in London frankly admitted that he never saw anybody struck without cause. As a rule the prisoner had given some cause.

On the other hand, it is clear that the accused exceeded his duty in a number of cases. He allowed his irritation to lead him into acts of violence against prisoners, which the circumstances did not justify. He has been indicted in all on account of 17 separate instances of physical ill-treatment, (comprised in the first indictment, charges I-X and in the second indictment, charges 1-3). There is one charge of insulting a prisoner. Of these, excluding the insulting, 12 cases have been proved to the satisfaction of the court. The evidence of the English witnesses for the prosecution has been generally accepted, as the court has seen no reason to disbelieve their statements. This decision of the court has not been affected by the findings of an earlier enquiry before General von der Goltz which was held at the request of the accused. This enquiry investigated the conditions of the camp at Pommerensdorf and is said to have found that there was no cause for any proceedings to be taken against Neumann.

A further 13th case of ill-treating prisoners has been separately proved. This concerns the prisoner Florence (II of the first indictment). This case

aroused the most indignation among the English prisoners at the time and its elucidation has taken up most time in this trial. But on this charge the accused must be acquitted on legal grounds. It relates to the events of 2nd April, 1917. The account of this given by the accused has been confirmed in its essential points by the evidence.

On 1st April, 1917, a fresh troop of English prisoners arrived at the working camp at Pommerensdorf. The work seemed to them to be too hard. They therefore decided jointly to refuse to do it. On the afternoon of 2nd April they carried out this decision and openly refused to work.

The prisoners, assembled for the night shift, announced to the non-commissioned officer Trienke through their interpreter that they would not work. Trienke tried in vain to get them to give in. All friendly persuasion was futile. He gave the commands "Right about turn," "Left about turn" without any result. Then he gave his sentries the order to set about the prisoners. The sentries went for the prisoners with the butts of their rifles and the prisoners dispersed in all directions. Prisoners were wounded. It has been established that Neumann took part in this attack on the prisoners. He fell upon the Scotchman, Florence, and belabored him with his fists and feet. He does not appear to have used a rifle at that time.

The accused cannot, however, be held responsible for these events. He was covered by the order of his superior which he was bound to obey. According to §47 of the Military Penal Code a subordinate can only be criminally responsible under such circumstances, when he knows that his orders involve an act which is a civil or military crime. This was not the case here. Before the non-commissioned officer Trienke gave this order he made telephone enquiries of the commandant of the camp at Altdamm. Therefore he himself clearly acted only upon the order of a superior. As matters stood there could be no doubt of the legality of the order. Unless there is to be irreparable damage to military discipline, even in a body of prisoners, disorderly tendencies have to be nipped in the bud relentlessly and they have to be stamped out by all the means at the disposal of the commanding officer and if necessary even by the use of arms. It is of course understood that the use of force in any particular case must not be greater than is necessary to compel obedience. It has not been established that there was any excessive use of force here. The accused has been charged with having continued to belabor Florence when he was lying on the ground and after the resistance of the prisoners generally had already been overcome. For this, however, no adequate proof has been forthcoming.

II. The justification provided in §47 of the Military Penal Code is not available for the accused as regards the other cases of ill-treating prisoners which have been proved against him. This is so as regards:—

1. *The Case of Kirkbride*

In this case also the accused claims that he was obliged to interfere solely owing to Kirkbride's obstinate refusal to work. That may be so. For

various witnesses have shown that it is probable that the case mentioned in I of the indictment is the same as that to which the evidence of Inspector Erdmann relates. That evidence was to the effect that Kirkbride, who with three other prisoners in Erdmann's gang had to wheel a barrow, was obviously idling and that he used expressions which showed that he had not the least desire to work for Germany ("For Germans nix arbeiten"). There was nothing else for the inspector to do but to call the accused to his assistance. Neumann was the only sentry in the camp, who, apart from Trienke, appears to have known how to bring stubborn workers to heel. Neumann spoke seriously to the Englishman but without result. Finally he took up the butt of his rifle and gave him several blows on the back and shoulders. The accused asserts that he only placed the butt against the prisoner's seat and that he then pushed him forward three or four paces. This account has been confirmed by Erdmann. On this point, however, the unanimous evidence of the English witnesses deserves greater credence. Their accounts differ only in one respect. Kirkbride says that he received such a fearful blow over the head with the butt that he was quite dizzy for a time, but the other witnesses tell only of blows with the butt across Kirkbride's shoulders and back.

The defence maintains that the circumstances justified the accused using his rifle against an insubordinate prisoner. But the existing service regulations only allow a sentry in a case of this kind to use his rifle when there is persistent disobedience to orders, which cannot be overcome in any other way. This was certainly not this case here. There were other ways of breaking the resistance of a single man and of forcing him to obey. It would have been an easy matter to arrest him. The court is convinced that the accused knew that this was possible.

If the use of the butt of the rifle was unjustifiable in Kirkbride's case, it was far more so in the following cases (2-9) in which the prisoners were not particularly refractory, but were struck by him simply because he thought they were not working properly or with sufficient diligence.

2. The Case of Smart

This witness is reliable and has stated on oath that on 2nd April, 1917, immediately after his arrival in camp, and when he had only just commenced work, Neumann knocked him down with his rifle and then belabored with the butt for no other reason than because he did not stack properly the sacks of phosphate manure, which he had to take from the factory to the mill.

3. The Prisoner Menzies

The accused pushed him so violently that he fell over a wheelbarrow. The barrow was overturned on him. The reason for the accused doing this was that Menzies was not going fast enough.

4. *The Prisoner Bray*

Neumann spoke to him in German while he was working. As Bray did not understand he gave him a fearful blow on his left cheek with his fist.

5. *Ernest Kelly*

This prisoner was one day chatting with another prisoner outside the barracks. This annoyed the accused. He therefore hit him on the back with the butt of his rifle. The witness states that he had felt pain from the effects of the blow for a long time afterwards.

6. *The Same Kelly*

On another occasion this prisoner was struck across the arm by the accused Neumann with the butt of his rifle, because, as he says, he was resting for a couple of minutes during work.

7. *The Case of Clark*

Clark was seen by the accused while he was talking with Florence, a fellow prisoner. Neumann reprimanded him and also hit him across the back with the butt of his rifle.

8. *Ezra Sommersgill*

This prisoner about August, 1917, requested to be sent to the doctor because he had influenza. The accused declined to do so and in order to make him begin work, hit Sommersgill's back and elbow with his butt. The witness was obliged to get medical treatment and was excused work for three days.

9. *Thomas Smith*

One day in May, 1917, this prisoner was busy loading railway wagons in the factory yard. Neumann shouted "Vorwaerts" (get on) to him in order to make him work quicker. At the same time Neumann hit him with the butt across the back; Smith fell to his knees.

III. Three further cases of ill-treatment (10, 11, 12) are different from the others because they were not caused by any disinclination to work or by any slack work on the part of the prisoners.

10. *The Scotchman—Florence*

This prisoner had appealed to the Commander-in-Chief at Stettin on account of the bad treatment which he had suffered (see above under I towards the end). Thereupon a senior German officer visited the camp and ordered an enquiry. Neumann (whom the English witnesses have often called non-commissioned officer Trienke's right-hand man) was angry at this and gave the man who had complained a thorough thrashing.

11. *J. Pennington*

This man had a quarrel with a fellow prisoner, a Canadian, at the spot where they were working. During the struggle a blow from his fist had cut his opponent's lip. The working party had nothing to do with the accused. But he came up, made enquiries about the offender and when one of the civilian workmen present told him who the offender was, the accused gave him a severe blow with the butt of his rifle, knocking him down. Pennington immediately got up again, but was promptly knocked down again by a second blow from the accused's butt.

The pretext of the accused, that it was his duty to put an end to the brawl and to separate the fighters, must be considered disproved. The English witnesses unanimously state that the fight between Pennington and the Canadian had already come to an end and that the working party was already drawn up for the mid-day meal when the accused first appeared upon the scene.

12. *Relates also to Clark*

Clark, in November, 1917, together with Hayes and Bailey, had escaped from the prisoners' camp at Pommerensdorf. They were soon captured and were first taken to Altdamm. From there the accused Neumann was ordered to fetch them back to Pommerensdorf. The three prisoners agree in their evidence that the accused belabored them with his butt when taking them in charge at the Altdamm Camp. All three say that they felt pains for weeks after.

IV. In the above twelve cases the accused is guilty of an offence (though his acts were separate) against sub-section 122 of the Military Penal Code. He kicked, struck or otherwise physically ill-treated prisoners, who were under his charge and were his subordinates. He did this deliberately, for he intended that his blows should hurt the prisoners. In doing this he had absolutely no justification. In isolated cases the accused may have only intended to keep the prisoners to their work. But there can be no question of his being entitled to secure proper results by these improper means. In all these cases the accused committed these acts of ill-treatment in the performance of his duties, and by making improper use of his weapons. His offences have, therefore, been aggravated and come under sub-section 55 of Military Penal Code No. 2. The two cases of ill-treatment charged in VII of the first indictment have not been proved. The evidence of the Englishman Bray relates to these charges. Bray says that he certainly saw two occasions when the accused thrust at English prisoners with the butt of his rifle. He is unable to state, however, either the names of the prisoners who were hurt or the apparent reason why the accused struck them. It is thus possible that the cases, which he witnessed, are included in those which have already been decided. Upon this separate charge, therefore, the accused is acquitted. In charge IX of the main indictment

there is another case of ill-treating Kelly. It is not improbable that the two blows with the butt across the arm of which Kelly speaks, were given on one and the same occasion; if so they would constitute a single military offence (sub-section 73 of the Penal Code). There remains the 17th instance of physical ill-treatment (charged in the second indictment under No. 3). This has to be considered separately. It concerns the soldier Robert Swail. The charge under this head is based exclusively upon the evidence of the witness Medlow, who gave his evidence in London. Upon closer examination, however, it appears that a mistake has been made. Medlow speaks only of the Englishman Robert Smart being ill-treated. He must have had in mind the offence charged in 2. The name Robert "Swail" does not appear in the proofs of the English witnesses.

13. Finally the accused is guilty of insulting behavior towards a prisoner, one of his subordinates. On one occasion, as reported by the witness Kelly, the accused called him a "Schweinhund" ("Pig Dog"). This is considered proved in spite of the accused's denial. The accused says in reference to this charge that one day three English prisoners, who had gone into the town, returned to camp drunk and that all he said was that the three prisoners were as drunk "as swine." There must be a further punishment of the accused on this account, for this was a breach of sub-section 121 of the Military Penal Code.

V. In deciding the sentence the court has taken into consideration the following factors: The accused acted from no dishonorable motives in his dealings with the prisoners who were placed under him. He was actuated solely by a desire to do his duty. The reproach of being a "Nigger Driver," (by which term was meant a superior who deliberately tormented his men without any other purpose than to give them pain), was in no wise justified. The trial has not revealed any tendencies to cruelty or any brutal disposition. If he made himself hated by the prisoners, who have given evidence against him, this can partly be explained by the fact that, loyal to his instructions, he always maintained severe discipline in the camp, and never shared in the technically irregular intimacies between the prisoners and the other sentries, which appear to have taken place in Pommerensdorf at that time. He was, as several German witnesses have explained, "a true soldier." His excesses (making use of the butt of his rifle even for trifling faults on the part of the prisoners) certainly cannot be excused in this way. None the less his offences must be regarded as comparatively light, especially when they were committed against prisoners, who were refractory and were not willing to work. The English witnesses assert, it is true, that they did all they could to perform the heavy work that was allotted to them. But this does not exclude the probability that the accused believed that he had to deal with insubordinate men, especially as on more than one occasion, there were open manifestations of insubordination on their part. The court has, therefore, regarded the offences under 1-9 as less serious in

the sense of sub-section 122, para. 1, of the Military Penal Code. On the other hand, the offences under 10, 11, and 12 are more serious. In these the accused punished the prisoners, from a sense of his own superiority and not because of any inadequate or alleged inadequate work. On account of the three last offences against sub-sections 122, 55, of the Military Penal Code, No. 2, separate punishments of two months' imprisonment each have been allotted. For each of the less serious cases of physical ill-treatment (under Nos. 1-9) the court considers a sentence of three weeks' intermediate arrest adequate. For the case of insulting under 13 (sub-section 121 of the Military Penal Code) the Court gives three days' intermediate arrest.

An inclusive sentence of six months' imprisonment is constituted out of these separate sentences in accordance with sub-section 74 of the Penal Code. The period of detention (which the accused has undergone) pending the trial (from 30th January to 2nd June, 1921) is to be reckoned as part of the sentence in accordance with sub-section 60 of the Penal Code.

The decision as to costs is based on sub-sections 497, 498, of the Criminal Procedure Regulations ("St. P.O.") in conjunction with sub-section 4 of the Imperial Law for the prosecution of war crimes and offences of 24th March, 1920.

(Signed) SCHMIDT,
SABARTH,
DR. PAUL,
BACKS,
KLEINE,
HAGEMANN,
DR. VOGT.

The present copy agrees with the original document.

(Signed) The Clerk of the Court of the Second
Criminal Senate of the Imperial Court of
Justice.

(Seal of the Court).

BORCHARD.

JUDGMENT IN CASE OF COMMANDER KARL NEUMANN

HOSPITAL SHIP "DOVER CASTLE"

Rendered June 4, 1921

IN THE NAME OF THE EMPIRE

In the criminal charge against Karl Neumann, Merchant, Commander (retired) of Breslau, born on 22nd December, 1887, in Kallowitz.

The Second Criminal Senate of the Imperial Court of Justice at a Sitting held in public on 4th June, 1921, at which there took part as Judges,

The President of the Senate, Dr. Schmidt, and the Imperial Justices Dr. Sabarth, Backs, Dr. Schultz, Dr. Kleine, Hagemann, Dr. Vogt,
as Official of the Public Prosecutor's Department,
The Oberreichsanwalt, Dr. Ebermeyer,
as Clerk of the Court,
Risch, Official,
after oral evidence:
The accused is acquitted.
The Imperial Treasury is to bear the costs of the Proceedings, including the necessary expenses incurred by the accused.

By Right

REASONS

During the war the accused, as First Lieutenant in the Navy, was Commander of the Submarine U.C. 67. In the list communicated by the Allied Powers to the Government by virtue of Art. 228, par. 2, of the Treaty of Peace he was charged with having, on 26th May, 1917, torpedoed the English hospital ship *Dover Castle* without warning and with having sunk her with exceptional brutality (*d'avoir torpillés sans avertissement et coulé dans des circonstances d'une extraordinaire brutalité le navire hôpital anglais 'Dover Castle'*).

The Attorney General has entered no indictment on this charge, but, in accordance with the law of 12th May, 1921, he has asked for an enquiry to decide the point whether the accused in the Tyrrhenian Sea, on 26th May, 1917, intentionally killed six men and whether these men were killed after full consideration (offence against §211 of the State Code ("StG B" 1). The result of these proceedings is as follows:—

On 26th May, 1917, the accused was in the Tyrrhenian Sea in command of the Submarine U.C. 67.

During the day he sighted two steamers, escorted by two destroyers. The weather was clear and sunny. The accused was therefore soon able to see that the two steamers carried the distinctive outward signs laid down for military hospital ships by the 10th Hague Convention, in accordance with the principles of the Geneva Convention on naval warfare of 18th October, 1907. He then approached nearer to the convoy, which was pursuing a zig-zag course, and about 6.0 p.m. he fired a torpedo at the steamer nearest to him. The steamer was hit; it remained stationary, but did not sink. One of the destroyers, which were accompanying it, came alongside its starboard side and took off its crew, as well as all the sick and wounded on board. Only after this had taken place, about 1½ hours after the first torpedo, did the accused sink the vessel by firing a second torpedo. He then rose to the surface and found out from the markings on the unmanned

life-boats which were drifting about that the sunken steamer was the *Dover Castle*.

According to the statement of the English Government, the *Dover Castle* had been serving for several years as a hospital ship and as such had regularly travelled from England to Malta and Salonica and from there back home. When torpedoed she had sick and wounded on board and was on her way to take them from Malta to Gibraltar. When the vessel was sunk not one of these perished. The first torpedo that was fired, however, caused the death of six members of the crew.

The accused frankly admits sinking the *Dover Castle*. He pleads that in so doing he merely carried out an order of the German Admiralty, his superior authority. With respect to this order the circumstances are as follows:—

During the first years of the war the German Admiralty respected the military hospital ships of their opponents in accordance with the regulations of the 10th Hague Convention referred to above. Later, however, they came to believe that enemy governments were utilizing their hospital ships not only to aid wounded, sick and shipwrecked people, but also for military purposes and that they were thereby violating this convention. In two memoranda, dated 29th January and 29th March, 1917, respectively, the German Government explained its attitude more clearly and gave proof in support of its assertions. It stated that it would not entirely repudiate the convention, but was compelled to restrict the navigation of enemy hospital ships. Accordingly it was announced in the second memorandum that henceforth, as regards the Mediterranean, only such hospital ships would be protected, which fulfilled certain conditions. The hospital ships had to be reported at least six weeks previously and were to keep to a given course on leaving Greece. After a reasonable period of grace, it was announced, all other enemy hospital ships in the Mediterranean would be regarded as vessels of war and forthwith attacked.

The second memorandum reached the enemy governments in the early part of April, 1917.

It corresponds with the order of the Admiralty issued on 29th March, 1917, to the German Flotilla in the Mediterranean.

As from 8 April hospital ships generally are no longer to be permitted in the blockaded area of the Mediterranean, including the route to Greece. Only a few special hospital ships, which have been notified by name at least six weeks previously, may use the channel up to the Port of Kalamata. Advise submarines that as from 8 April every hospital ship on the routes named is to be attacked forthwith, excepting such only as have been expressly notified from here, in which cases speed, times of arrival and departure will be exactly stated.

This order was communicated to the accused before his departure from Cattaro. Previously the two memoranda had been also brought to his

knowledge. Exceptions in the case of hospital ships had not been arranged, as the enemy governments made no use of the opportunities to notify their hospital ships given in the memorandum of 29th March, 1917.

In the circumstances the acquittal of the accused has been requested.

It is a military principle that the subordinate is bound to obey the orders of his superiors. This duty of obedience is of considerable importance from the point of view of the criminal law. Its consequence is that, when the execution of a service order involves an offence against the criminal law, the superior giving the order is alone responsible.

This is in accordance with the terms of the German law, §47, para. 1 of the Military Penal Code. It also accords with the legal principles of all other civilized states (*see*, for example, as regards England, the Manual of Military Law (1914), chapter XIV, Art. 443 quoted in Verdross' *Die völkerrechtswidrige Kriegshandlung und der Strafausspruch der Staaten*. "Breaches of International Law in the Conduct of War and National claims for punishment," page 95.)

The Admiralty Staff was the highest service authority over the accused. He was in duty bound to obey their orders in service matters. So far as he did that, he was free from criminal responsibility. Therefore he cannot be held responsible for sinking the hospital ship *Dover Castle* according to orders.

Under §47 of the Military Penal Code quoted above, there are two exceptional cases in which the question of the punishment of a subordinate who has acted in conformity with his orders can arise. He can in the first place be held responsible, if he has gone beyond the orders given him. In the present case the accused has not gone beyond his orders. It was impossible to give a warning to the *Dover Castle* before the torpedo was fired, because she was escorted by two warships. The accused is not charged with any peculiar brutality in sinking the ship. On the contrary he made it possible to save all the sick and wounded on board the *Dover Castle* by allowing about 1½ hours to elapse between the firing of the first and second torpedoes.

According to §47 of the Military Penal Code No. 2, a subordinate who acts in conformity with orders is also liable to punishment as an accomplice, when he knows that his superiors have ordered him to do acts which involve a civil or military crime or misdemeanor. There has been no case of this here. The memoranda of the German Government about the misuse of enemy hospital ships were known to the accused. The facts set out in them he held to be conclusive, especially as he had received, as he has explained, similar reports from his comrades. He was therefore of the opinion that the measures taken by the German Admiralty against enemy hospital ships were not contrary to international law, but were legitimate reprisals. His conduct clearly shows that this was his conviction. He never made any secret of the sinking of the *Dover Castle*. Not only did he report it to his superiors, but he has also frankly admitted it in the present proceedings. He

has never disputed that he knew that the *Dover Castle* was a hospital ship. It is specially noteworthy that he allowed an English captain, whom he had on board his submarine as prisoner, to observe his approach to the *Dover Castle*. Although this enemy subject thus knew about the sinking of the hospital ship, the accused on going ashore gave him a certificate when he asked for one and signed it with his full name, giving his rank in the service. He would not have done this if he had considered that his orders or his execution of them were illegal.

The accused accordingly sank the *Dover Castle* in obedience to a service order of his highest superiors, an order which he considered to be binding. He cannot, therefore, be punished for his conduct.

The decision as to costs is based on §499 St. P.O.

(Signed) SCHMIDT,
SABARTH,
BACKS,
SCHULTZ,
KLEINE,
HAGEMANN,
DR. VOGT.

The accuracy of this copy is hereby certified.

(Signed)

The Clerk of the Court of the 2nd Criminal Senate
of the Imperial Court of Justice.

(Seal of the Court.)

JUDGMENT IN CASE OF LIEUTENANTS DITHMAR AND BOLDT

HOSPITAL SHIP "LLANDOVERY CASTLE"

Rendered July 16, 1921

IN THE NAME OF THE EMPIRE

In the criminal case against:

(1) Ludwig Dithmar of Cuxhaven, First Lieutenant and Adjutant of the Cuxhaven Command, at present detained during trial, born in Aix-la-Chapelle on the 13th May, 1892, and

(2) John Boldt of Altona, retired First Lieutenant, merchant, at present detained during trial, born in Dantzig on the 26th January, 1895.

The Second Criminal Senate of the Imperial Court of Justice, at its public sitting of the 16th July, 1921, at which there took part as Judges:

Dr. Schmidt, President of the Division,

Judges Dr. Sabarth, Dr. Paul, Backs, Dr. Schultz, Hagemann, Dr. Vogt,

as Officials of the Public Prosecutor's Department:

Dr. Ebermayer, the Oberreichsanwalt,

Dr. Feisenberger, State Attorney,

as Clerk of the Court:

Risch, Official,

has pronounced judgment as follows, after hearing the evidence, namely :

I. Each of the accused is sentenced to four years' imprisonment for having taken part in homicide;

II. Further,

(i) The accused Dithmar is ordered to be dismissed from the service,

(ii) The accused Boldt is deprived of the right to wear officer's uniform;

III. The accused have to bear the costs of the proceedings.

The expenses, however, are to be paid by the Imperial Treasury.

By Right

REASONS FOR THE DECISION

Up to the year 1916 the steamer *Llandoverly Castle*, had, according to the statements of the witnesses Chapman and Heather, been used for the transport of troops. In that year she was commissioned by the British Government to carry wounded and sick Canadian soldiers home to Canada from the European theatre of war. The vessel was suitably fitted out for the purpose and was provided with the distinguishing marks, which the Tenth Hague Convention of the 18th October, 1907 (relating to the application to naval warfare of the principles of the Geneva Convention) requires in the case of naval hospital ships. The name of the vessel was communicated to the enemy powers. From that time onwards she was exclusively employed in the transport of sick and wounded. She never again carried troops, and never had taken munitions on board. There can be no doubt about this in the light of the statements of the witness Thring, as well as of those witnesses who have been on board the steamer.

The witness Meyer, who saw the *Llandoverly Castle* at the Port of Toulon, did not notice anything about her that could have led to the conclusion that she was being improperly used for war purposes. The court is convinced that the 120 men in khaki, whom the witness Crompton saw go on board the *Llandoverly Castle* in Tilbury Docks at the beginning of December, 1916, belonged to the Medical Corps.

At the end of the month of June, 1918, the *Llandoverly Castle* was on her way back to England from Halifax, after having carried sick and wounded there. She had on board the crew consisting of 164 men, 80 officers and men of the Canadian Medical Corps, and 14 nurses, a total of 258 persons. There were no combatants on board, and, in particular, no American airmen. The vessel had not taken on board any munitions or other war material. This has been clearly established by the statement of the second

officer, the witness Chapman. If a few witnesses draw the inference from the violence of the explosion, which they heard when the vessel went down, that not only the vessel's boilers but also munitions exploded, this is not conclusive in the light of the statement of the expert, Corvette Captain Saalwächter. From the sound it is not possible to distinguish with certainty between an explosion of a boiler and one of munitions.

In the evening of 27th June, 1918, at about 9.30 (local time) the *Llandoverly Castle* was sunk in the Atlantic Ocean, about 116 miles south-west of Fastnet (Ireland), by a torpedo from the German U-boat 86. Of those on board only 24 persons were saved, 234 having been drowned. The commander of U-boat 86 was First-Lieutenant Patzig, who was subsequently promoted captain. His present whereabouts are unknown. The accused Dithmar was the first officer of the watch, and the accused Boldt the second. Patzig recognized the character of the ship, which he had been pursuing for a long time, at the latest when she exhibited at dusk the lights prescribed for hospital ships by the Tenth Hague Convention. In accordance with international law, the German U-boats were forbidden to torpedo hospital ships. According both to the German and the British Governments' interpretation of the said Hague Convention, ships, which were used for the transport of military persons wounded and fallen ill in war on land, belonged to this category. The German Naval Command had given orders that hospital ships were only to be sunk within the limits of a certain barred area. However, this area was a long way from the point we have now under consideration. Patzig knew this and was aware that by torpedoing the *Llandoverly Castle* he was acting against orders. But he was of the opinion, founded on various information (including some from official sources, the accuracy of which cannot be verified, and does not require to be verified in these proceedings), that on the enemy side, hospital ships were being used for transporting troops and combatants, as well as munitions. He, therefore, presumed that, contrary to international law, a similar use was being made of the *Llandoverly Castle*. In particular, he seems to have expected (what grounds he had for this has not been made clear) that she had American airmen on board. Acting on this suspicion, he decided to torpedo the ship, in spite of his having been advised not to do so by the accused Dithmar and the witness Popitz. Both were with him in the conning tower, the accused Boldt being at the depth rudder.

The torpedo struck the *Llandoverly Castle* amidship on the port side and damaged the ship to such an extent that she sank in about 10 minutes. There were 19 lifeboats on board. Each could take a maximum of 52 persons. Only two of them (described as cutters) were smaller, and these could not take more than 23 persons. Some of the boats on the port side were destroyed by the explosion of the torpedo. A good number of undamaged boats were, however, successfully lowered. The favorable weather assisted life-saving operations. There was a light breeze and a slight swell.

The men who were saved from the *Llandoverly Castle* do not agree as regards the number of boats which got away safely. This is sufficiently explained by the circumstances, and particularly by the state of excitement, into which the majority of them were plunged, by the torpedoing and sinking of the ship. However, from the statement of the witness Chapman, in conjunction with other evidence, it may be concluded that of the boats on the starboard side, three (marked with odd numbers) were got away undamaged with two of the boats on the port side (marked with even numbers). Chapman, who was second officer on board the *Llandoverly Castle*, has impressed the court as a quiet, clear-headed and reliable witness. The evidence has also on several occasions shown that he did not lose his head while the ship was sinking, but that he coolly took all the necessary measures. Confidence can, therefore, be placed unhesitatingly in his evidence. He saw five boats lowered from the starboard side, two of which, however, capsized, so that only three got away safely. This tallies with the statement of Murphy, 1st class seaman, that he saw that Nos. 1, 3 and 5 of the starboard boats (which he had helped to lower) got clear of the ship. Other witnesses also saw starboard boats safely lowered. Heather saw Nos. 5 and 7 (No 11, according to him, capsized). Abrahams saw Nos. 7 and 1, or 3, and Lyon saw No. 3. Two boats got away from the port side. In one of them, when it left the *Llandoverly Castle*, was the captain of the ship, Sylvester, who has since died; 10 other persons were also in his boat. Later it picked up 12 persons, who were swimming about in the water. In addition, as will be further explained later, one man from another life-boat was handed over by the U-boat. This boat ultimately contained 24 men, and will henceforth be referred to as the captain's boat. It was the only one whose occupants were rescued; its occupants are the only survivors of the *Llandoverly Castle*. According to the statements of the witnesses Chapman, Abrahams and Murphy, it bore the number 4, whereas witness Lyon thinks it was not No. 4. In addition to the captain's boat, another got clear from the port side, and it had in it the first officer and five or six seamen. According to the evidence of the fourth officer, the witness Barton, this was the port cutter.

It is quite possible that out of these five boats which left the steamer safely, one or two may have been drawn into the vortex made by the sinking ship. But the evidence has shown that at least three of these five boats survived the sinking of the ship. The witnesses Chapman and Barton saw them rowing about at a later period, as well as the captain's boat, the port cutter and boat No. 3. The port cutter was manned by the first officer and a few seamen.

That boat No. 3 got clear away is proved by the following facts:— During the examination of the captain's boat by the U-boat which will be described later, the latter handed over to the former a man belonging to the medical staff, who was not originally in the captain's boat. According to

his statement, the boat on which he had been had also been stopped by the U-boat; he was taken off and detained in the U-boat. He gave the number of the boat in which he originally was as No. 3. This agrees with the statements made by witnesses, who say that No. 3 boat got safely clear of the ship. That the man did not come from the first officer's boat is shown by the fact that the latter, being a port-side boat, bore an even number. No medical corps men, only seamen, were seen in it.

Thus, after the sinking of the *Llandoverly Castle*, there were still left three of her boats with people on board.

Some time after the torpedoing, the U-boat came to the surface and approached the lifeboats, in order to ascertain by examination whether the *Llandoverly Castle* had airmen and munitions on board. The witness Popitz, who was steersman on board the U-boat, took part in the stopping of several lifeboats for that purpose. The occupants of the captain's boat gave a fuller description of this. It was called by the U-boat, while it was busy rescuing shipwrecked men, who were swimming about in the water. As it did not at once comply with the request to come alongside, a pistol shot was fired as a warning. The order was repeated and the occupants were told that, if the boat did not come alongside at once, it would be fired on with the big gun. The lifeboat then came alongside the U-boat. Capt. Sylvester had to go on board the U-boat. There he was reproached by the commander with having had eight American airmen on board. Sylvester denied this and declared that, in addition to the crew, only Canadian medical corps men were in the ship. To the question whether there was a Canadian officer in the lifeboat he answered "Yes." Then the latter, the witness Lyon, doctor and major in the medical corps, were taken on board the U-boat. On being told that he was an American airman, Lyon answered, as was true, that he was a doctor. He also answered in the negative the further question whether the *Llandoverly Castle* had munitions on board. Sylvester and Lyon were then released, and the latter was told by one of the U-boat officers that it would be better for them, the occupants of the lifeboat to clear off at once. Captain Sylvester said later that he also was told the same.

The U-boat then left the captain's boat, but, after moving about for a little time, returned and again hailed it. Although its occupants pointed out that they had already been examined, the captain's boat was again obliged to come alongside the U-boat. The witnesses, Chapman and Barton, the second and fourth officers of the *Llandoverly Castle*, were taken on board the U-boat and were subjected to a thorough and close examination. The special charge brought against them was that there must have been munitions on board the ship, as the explosion when the ship went down had been a particularly violent one. They disputed this and pointed out that the violent noise was caused by the explosion of the boilers. They were again released. The U-boat went away and disappeared from sight for a time.

The U-boat soon returned, and made straight for the captain's boat. Its occupants feared lest they might be run down. The U-boat, however, passed by, made a big circle and again made straight for the lifeboat, but when quite close to it, it was steered slightly sideways, so that it passed by without touching the lifeboat. The occupants of the boat nevertheless thought that the U-boat wanted to ram it and thus destroy it. There is, however, no conclusive evidence of this, although the suspicion cannot be refuted entirely. The expert, Corvette Capt. Saalwächter, maintains that the direction which the U-boat took at the last moment when approaching the second time, rather points against an intention to ram. In this connection, however, the question does not need to be settled, as the two accused cannot be made answerable, even if the commander of the U-boat had intended at the time to sink the lifeboat. The evidence has not brought out any point in support of the assumption that at that particular time the accused participated in any way in the management of the boat.

After passing by the second time, the U-boat once more went away. The lifeboat, which had hoisted a sail in the meantime, endeavored to get away. But after a brief period, the occupants of the boat noticed firing from the U-boat. The first two shells passed over the lifeboat. Then firing took place in another direction; about 12 to 14 shots fell all told. The flash at the mouth of the gun and the flash of the exploding shells were noticed almost at the same time, so that, as the expert also assumes, the firing was at a very near target. After firing had ceased, the occupants of the lifeboat saw nothing more of the U-boat.

The captain's boat cruised about for some 36 hours altogether. On the 29th June, in the morning, it was found by the English destroyer *Lysander*. The crew were taken on board and the boat left to its fate. During the 29th June, the commander of the English Fleet caused a search to be made for the other lifeboats of the *Llandoverly Castle*. The English sloop *Snowdrop* and four American destroyers systematically searched the area, where the boats from the sunken ship might be drifting about. The *Snowdrop* found an undamaged boat of the *Llandoverly Castle* 9 miles from the spot on which the *Lysander* had found the captain's boat. The boat was empty, but had been occupied, as was shown by the position of the sail. According to observations made while passing by, this boat bore the number 6. Otherwise the search which was continued until the evening of the 1st July, in uniformly good weather, remained fruitless. No other boat from the *Llandoverly Castle* and no more survivors were found.

The firing from the U-boat was not only noticed by the occupants of the captain's boat. It was also heard by the witnesses Popitz, Knoche, Ney, Tegtmeier and Käss, who were members of the crew of the U-boat. According to their statements a portion of the crew of the U-boat were on deck during the evolutions of the U-boat, during the holding up of the lifeboat and during the interrogation of the Englishmen. Witnesses Popitz and Knoche

took part in the interrogation, and confirm that no proof was obtained of the misuse of the *Llandovery Castle*.

After the examination was completed the command "Ready for submerging" was given. Whether these actual words were used or whether the command was differently worded, such as "Below," the witnesses do not recollect. At all events, the whole of the crew went below deck, as is the case when the order to be ready for diving is given. There only remained on deck Commander Patzig, the accused, as his officers of the watch and, by special order, the first boatswain's mate, Meissner, who has since died. It is doubtful whether the latter first went below and was then called on deck again, or whether he remained on deck. At any rate, the witness Knoche, who had the same post as Meissner when the boat was under water, never saw him again in the control room of the boat. The statement of witness Ney, who is supposed to have heard from a third party on the following day that Meissner had been ordered on deck, because one of the officers had hurt his hand, is not sufficient for any definite conclusion to be drawn. Moreover, Ney knows nothing about Meissner, only having gone on deck after the firing had begun. Firing commenced some time after the crew had gone below. The witnesses heard distinctly that only the stern gun, a 8.8 c/m gun was in action. While firing, the U-boat moved about. It did not submerge even after the firing had ceased, but continued on the surface.

The prosecution assumes that the firing of the U-boat was directed against the lifeboats of the *Llandovery Castle*. The court has arrived at the same conclusion as the result of the evidence given at this time.

The suggestion that firing was directed against some enemy vessel which appeared suddenly on the surface during the night may be at once dismissed. It is true that, according to the report of the expert, Corvette Captain Saalwächter, it was advisable to have the boat ready for submersion, and accordingly to send the crew below deck, as after the torpedoing of the *Llandovery Castle*, it was necessary to reckon with enemy operations, which might have been the consequence of a wireless call from the sinking ship. He also states that it has often happened that a U-boat has fired a few shots at an enemy vessel coming in sight, so as to make it retire or at least to delay it. But what remains inexplicable is that, if there really was an enemy in the neighborhood, the U-boat was not submerged at once after firing, in order to evade the attack of such enemy in the surest way. There is absolutely no evidence that there were any special circumstances, which would render impossible or superfluous the readiest method of escape, which was submersion. As regards the firing, the fact that diving was not resorted to thus acquires a certain amount of importance, although the command "Ready for diving" is not always, or even generally, followed by submersion.

The further possibility must be considered that the commander of the U-boat may have been deceived by some object floating on the water, and that

he may have mistaken it for an enemy vessel. Such deceptions do occur at night on the open sea. However, they would but seldom occur in the case of an experienced commander, such as Patzig is reported to be. And it is hardly likely that such a mistake would have induced him to fire. It seems impossible that the conduct of Patzig was founded on such an error, if we consider the circumstances, which point to deliberate firing on the lifeboats.

In this connection we must refer to the opinion of the actual witnesses, both English and German. With the exception of a few German witnesses, who adduce nothing to the contrary, but simply abstain from expressing any opinion at all, they all, from their own impressions, describe the firing as being directed against the lifeboats. In the case of the occupants of the captain's boat, the fact must not be overlooked that the impartiality of their opinion may have been affected by their excitement as the result of the sinking of their ship, and by the mistrust, which was prevalent on both sides during the war of the enemy and his method of carrying on war. But it is all the more significant that the witness Chapman, whose clear and impartial attitude has been specially mentioned above, did not at first assume that the two shots, which went far over the captain's boat, were directed against it, but that he finally became convinced that the firing from the U-boat was intended to destroy the lifeboat, because of what he subsequently observed.

The crew of the U-boat have the same conviction. During the following days they were extremely depressed. A subsequent collision with a mine, which placed the U-boat in the greatest danger, was regarded as a punishment for the events of the 27th of June. It is certainly to be taken into consideration that experienced crews, as is well known, easily believe mere rumors; but here also we have again two witnesses, who, by virtue of their position and their personal character, must be regarded as apart from the rest of the crew, and whose opinion is therefore of special value.

The witness Popitz, though a helmsman, was acting in the U-boat as third officer of the watch. In his previous examination he gave his evidence hesitatingly, and it was only after he had been sworn that he committed himself to an unreserved statement. In this trial he has given the impression of being a quiet and cautious man. He was on deck when the lifeboat was hailed, but went below before the order to prepare to dive was given, in order to work out the position where the torpedoing had taken place. After this, he lay down in his bunk, as he was no longer on watch. From then onwards he heard the shooting. He enquired the reason from a member of the crew, and received the reply that there was nothing the matter and that the crew were to remain below. On account of this the witness did not go on deck, although that was his post in the event of a fight. Under these circumstances he took it for granted at once, as there was no question of any other enemy, that the lifeboats were being fired at.

The witness Knoche was the chief engineer of *U-86*. He also was below when the firing took place, but he also assumed that it was connected with

the lifeboats. He says that he set the idea aside, as he did not at all like it. He did not want to know what was going on on deck. Some days later he was talking to Patzig about the occurrence and told him that he could not have done "That;" Patzig answered him that he could never do it a second time. It is unthinkable that this conversation could have related only to the torpedoing of the *Llandovery Castle*, and not also to the subsequent shooting which took place, even though the witness now says that it related only to the first occurrence, namely, the sinking.

The evidence of the witnesses brings out a further damaging feature of importance, and this is the behavior of Patzig as well as of the accused. Only slight importance is to be attached to the fact that the latter, on finding that they would be called as witnesses, when proceedings were first being taken against Patzig alone, refused to give their testimony, on the ground that their utterances would lay them open to the danger of punishment according to law. But it is very much to their prejudice that, in the further proceedings, and then also in this trial, they have refused, when called upon, every explanation on essential points, on the ground that they had promised Patzig to be silent with respect to the occurrences of the 27th June, 1918. The accused, Dithmar, has only added that he disputes the fact that he did anything deserving punishment. In the course of the proceedings, he also pointed out that he never operated the after gun, which was the one in action. The accused Boldt has said a little more. He likewise repudiated any guilt, and specially denied having fired. He then went on to say that, whatever part he took in the events in question, he was always under the orders of his commander. He says that it was not known to him that these orders contained anything for which punishment would be inflicted, or that by carrying them out he rendered himself liable to punishment.

This refusal of the accused to give any adequate explanation of the matter might, perhaps, be understood, if it were only a question of a decision being given with regard to the torpedoing of the *Llandovery Castle*. But the promise of silence which, according to their joint testimony, they gave to Patzig, extended also to the subsequent events. This can only lead to the conclusion that they also have reason to fear the light of day, as events which deserve punishment did actually take place. This can only have been the firing on the lifeboats. If the firing could be explained in any other way, it cannot be imagined that the agreement of the accused to maintain silence could prevent them from denying the firing on the boats, without entering into other matters.

Similarly, the conduct of Patzig can only be explained on the supposition, that he does not regard himself as guilty only of the inexcusable torpedoing of the *Llandovery Castle*. It is clear that by every means he has endeavored to conceal this event. He made no entry of it in the vessel's log-book. He has even entered on the chart an incorrect statement of the route taken by the ship, showing a track a long way distant from the spot where the tor-

pedoing occurred, so that, in the event of the sinking of the *Llandoverly Castle* becoming known, no official enquiries into the matter could connect him with it. But his precautions extended further. The promise to maintain silence, which he extracted from the accused, has already been put in its true light. If it covered no more than the quite well-known fact of the torpedoing, Patzig would certainly have found ways and means of releasing his subordinates from this promise, after proceedings had been instituted against them. But, on the contrary, he endeavored to bind to silence the remainder of the crew of the U-boat with regard to the events of the 27th June. He called them together on the following day and made a speech to them, in the course of which he requested them to say nothing about the happenings of the previous day. He laid emphasis in his speech on the fact that, for what had taken place, he would be responsible to God and to his own conscience. It is hardly necessary to draw attention to the fact that behavior of this nature on the part of a commander towards his crew is unusual and striking. Although Patzig in this speech may have made no special mention of gunfire, he certainly would have alluded to it, specially had not his request for silence covered the subsequent firing. The view of the crew that the shooting was directed entirely against the lifeboats cannot have been hidden from him. It was also entirely within his power to correct this opinion when he was speaking to them about the events of the 27th June, and to explain to them, if their opinion was wrong, the real object of the firing.

The promise which the accused Boldt exacted from the two English prisoners, who were in the U-boat (the witnesses Potts and Crosby), to the effect that they should keep silent until the end of the war with regard to their detention on board the U-boat, is not of importance. A promise of this kind must, as the naval expert points out, necessarily be given by prisoners on board a U-boat. There is, therefore, nothing remarkable about this incident.

The naval expert has also to admit that the whole episode, as set forth in the evidence, is very much to the discredit of the U-boat, and that it compels the impression that all was not as it should be. He himself admits that his own efforts to explain away the circumstances, merely as signs of negligence on the part of Patzig, are not entirely satisfactory. The only way, in which he can suggest that a conclusion of deliberate intention can be avoided, is by a refusal to recognize the force of the overwhelming evidence. The firing on the boats on a dark night—though with good visibility—may not furnish complete proof of their destruction. Perhaps, if the U-boat had approached the lifeboats and had thrown hand-grenades at them, there might have been a better chance of success. But there was always the possibility of their object being attained in the way which the officers chose to pursue. So it is not inconceivable that Patzig, in the position in which he found himself placed as the result of the torpedoing of the *Llandoverly Castle*, adopted a

method whereby there was a constant risk of something miscarrying. How easy it was to fire on the boats, is shown by the threat made when the captain's boat was stopped, as has already been mentioned, to the effect that, if it did not approach it would be fired on with the big gun. The number of the boats and their position must have been quite well known to Patzig, when one takes into account for how long a time he had been cruising around. The fact that the captain's boat rowed away may easily be explained by the darkness of the night. The attempt of the U-boat did not meet with full success. The English prisoners on board the U-boat were not able to give a definite account of the events. With reference to them, the fact must not be overlooked that it was not until after the war was over that they could be in a position to state what they had seen and heard.

If finally the question is asked—what can have induced Patzig to sink the lifeboats, the answer is to be found in the previous torpedoing of the *Llandoverly Castle*. Patzig wished to keep this quiet and to prevent any news of it reaching England. He may not have desired to avoid taking sole responsibility for the deed. This fits in with the descriptions given of his personality. He may have argued to himself that, if the sinking of the ship became known (the legality of which he, in view of the fruitlessness of his endeavors to prove the misuse of the ship, was not able to establish), great difficulties would be caused to the German Government in their relations with other powers. Irregular torpedoings had already brought the German Government several times into complications with other states, and there was the possibility that this fresh case might still further prejudice the international position of Germany. This might bring powers, that were still neutral, into the field against her. Patzig may have wished to prevent this, by wiping out all traces of his action. The false entries in the log-book and the chart, which have already been mentioned, were intended, having regard to his position in the service, to achieve this object. This illusion could be, however, of but short duration, if the passengers in the lifeboats, some of whom had been on board the U-boat, and who, therefore, could fully describe it, were allowed to get home. It was, therefore, necessary to get rid of them, if Patzig did not wish the sinking of the *Llandoverly Castle* to be known. Herein is to be found the explanation of the unholy decision, which he came to and promptly carried out after his fruitless examination of the boats.

On these various grounds the court has decided that the lifeboats of the *Llandoverly Castle* were fired on in order to sink them. This is the only conclusion possible, in view of what has been stated by the witnesses. It is only on this basis that the behavior of Patzig and of the accused men can be explained.

The court finds that it is beyond all doubt that, even though no witness had direct observation of the effect of the fire, Patzig attained his object so far as two of the boats were concerned. The universally known efficiency

of our U-boat crews renders it very improbable that the firing on the boats, which by their very proximity would form an excellent target, was without effect. This must be considered in conjunction with the special circumstances in this case. As has been shown above, three boats escaped when the ship sank. In view of the danger of being drawn into the vortex of the sinking steamer, they had rowed away, and they were then in the open sea where only the perils of the sea surrounded them. These, however, at the time were not great. The wind and sea were calm. There is, therefore, no reason why the two missing boats, as well as the captain's boat which was rescued, should not have remained seaworthy until the 29th of June, 1918, when, after the latter had been picked up, a search was made in the neighboring waters. This search was thoroughly carried out by five warships, without a trace of either of the boats being discovered. The empty boat, which was encountered by the *Snowdrop*, was evidently, having regard to the position where it was found and the description which was given of it, the abandoned boat of the captain. The discrepancy in the reports about the number of the two boats can easily be due to a mistake. In any case, the boat which was seen by the *Snowdrop*, was not the boat No. 3 which was, without any dispute, proved to have been stopped by the U-boat. If the boats had not fallen victims to the gunfire, it is certain that they must have been found by the warships engaged in searching for them. For their disappearance the U-boat must be held responsible.

For the firing on the lifeboats only those persons can be held responsible, who at the time were on the deck of the U-boat; namely Patzig, the two accused and the chief boatswain's mate Meissner. Patzig gave the decisive order, which was carried out without demur in virtue of his position as commander. It is possible that he asked the opinion of the two accused beforehand, though of this there is no evidence. As Meissner was the gunlayer and remained on deck by special orders, it may be assumed with certainty that he manned the after gun which was fired. In the opinion of the naval expert, he was able to act without assistance. According to this view, owing to the nearness of the objects under fire, there was no need for the fire to be directed by an artillery officer, such as the accused Dithmar. The only technical explanation, which both the accused have given and which fits in with the facts, is that they themselves did not fire. Under the circumstances this is quite credible. They confined themselves to making observations while the firing was going on. The naval expert also assumes that they kept a look-out. Such a look-out must have brought the lifeboats, which were being fired on, within their view. By reporting their position and the varying distances of the life-boats and such like, the accused assisted in the firing on the life-boats, and this, quite apart from the fact that their observations saved the U-boat from danger from any other quarter, and that they thereby enabled Patzig to do what he intended as regards the life-boats. The statement of the accused Boldt that "so far as he took

part in what happened, he acted in accordance with his orders" has reference to the question whether the accused took part in the firing on the life-boats. He does not appear to admit any participation. But the two accused must be held guilty for the destruction of the life-boats.

With regard to the question of the guilt of the accused, no importance is to be attached to the statements put forward by the defence, that the enemies of Germany were making improper use of hospital ships for military purposes, and that they had repeatedly fired on German lifeboats and shipwrecked people. The President of the court had refused to call the witnesses on these points named by the defence. The defence, therefore, called them direct. In accordance with the rules laid down by law (para. 244 St. P.O.) the court was obliged to grant them a hearing. What the witnesses have testified cannot, in the absence of a general and exhaustive examination of the events spoken to by them, be taken as evidence of actual facts. The defence refused a proposal for a thorough investigation of the evidence thus put forward having regard, particularly, to the opinion of the naval expert, Saalwächter, that throughout the German fleet it was a matter of general belief that improper use of hospital ships was made by the enemy. It must, therefore, be assumed for the benefit of the accused, that they also held this belief. Whether this belief was founded on fact or not, is of less importance as affecting the case before the court, than the established fact that the *Llandovery Castle* at the time was not carrying any cargo or troops prohibited under clause 10 of the Hague Convention.

The act of Patzig is homicide, according to para. 212 of the Penal Code. By sinking the life-boats he purposely killed the people who were in them. On the other hand no evidence has been brought forward to show that he carried out this killing with deliberation. Patzig, as to whose character the court has no direct means of knowledge, may very well have done the deed in a moment of excitement, which prevented him from arriving at a clear appreciation of all the circumstances, which should have been taken into consideration. The crew of a submarine, in consequence of the highly dangerous nature of their work, live in a state of constant tension. This is liable to become greater if a torpedoing takes place, particularly in the case of the commander, who is responsible for the act. Several factors were present in this case, which tended specially to deprive Patzig of the power to arrive at a calm decision. He had said that he would torpedo a hospital ship, with all its characteristic markings, in the expectation of being able to prove that it was being used for improper purposes. His hope was in vain. In spite of the most minute investigation, it was not possible for him to obtain any confirmation of his assumption. Then arose the question, how he could avert the evil consequences of his error of judgment. He had to decide quickly: he had to act quickly. Under this pressure of circumstances, he proceeded in a manner which the naval expert rightly described as imprudent. In the darkness of the night there was only

a small chance of hitting all the boats. The fact that, as explained above, this did not restrain him from the act, points to the consideration that he did not allow himself time to think the matter over, so little was the idea in his mind of the far-reaching effect of his action.

In view of this state of excitement, which under the circumstances has to be taken into account, the execution of the deed cannot definitely be called deliberate (in the sense implied in para. 211 of the Penal Code).

The firing on the boats was an offence against the law of nations. In war on land the killing of unarmed enemies is not allowed (compare the Hague regulations as to war on land, para. 23(c)), similarly in war at sea, the killing of shipwrecked people, who have taken refuge in life-boats, is forbidden. It is certainly possible to imagine exceptions to this rule, as, for example, if the inmates of the life-boats take part in the fight. But there was no such state of affairs in the present case, as Patzig and the accused persons were well aware, when they cruised around and examined the boats.

Any violation of the law of nations in warfare is, as the Senate has already pointed out, a punishable offence, so far as in general, a penalty is attached to the deed. The killing of enemies in war is in accordance with the will of the State that makes war, (whose laws as to the legality or illegality on the question of killing are decisive), only in so far as such killing is in accordance with the conditions and limitations imposed by the law of nations. The fact that his deed is a violation of international law must be well-known to the doer, apart from acts of carelessness, in which careless ignorance is a sufficient excuse. In examining the question of the existence of this knowledge, the ambiguity of many of the rules of international law, as well as the actual circumstances of the case, must be borne in mind, because in war time decisions of great importance have frequently to be made on very insufficient material. This consideration, however, cannot be applied to the case at present before the court. The rule of international law, which is here involved, is simple and is universally known. No possible doubt can exist with regard to the question of its applicability. The court must in this instance affirm Patzig's guilt of killing contrary to international law.

The two accused knowingly assisted Patzig in this killing, by the very fact of their having accorded him their support in the manner, which has already been set out. It is not proved that they were in agreement with his intentions. The decision rested with Patzig as the commander. The others who took part in this deed carried out his orders. It must be accepted that the deed was carried out on his responsibility, the accused only wishing to support him therein. A direct act of killing, following a deliberate intention to kill, is not proved against the accused. They are, therefore, only liable to punishment as accessories. (Para. 49 of the Penal Code.)

Patzig's order does not free the accused from guilt. It is true that according to para. 47 of the Military Penal Code, if the execution of an order

in the ordinary course of duty involves such a violation of the law as is punishable, the superior officer issuing such an order is alone responsible. According to No. 2, however, the subordinate obeying such an order is liable to punishment, if it was known to him that the order of the superior involved the infringement of civil or military law. This applies in the case of the accused. It is certainly to be urged in favor of the military subordinates, that they are under no obligation to question the order of their superior officer, and they can count upon its legality. But no such confidence can be held to exist, if such an order is universally known to everybody, including also the accused, to be without any doubt whatever against the law. This happens only in rare and exceptional cases. But this case was precisely one of them, for in the present instance, it was perfectly clear to the accused that killing defenceless people in the life-boats could be nothing else but a breach of the law. As naval officers by profession they were well aware, as the naval expert Saalwächter has strikingly stated, that one is not legally authorized to kill defenceless people. They well knew that this was the case here. They quickly found out the facts by questioning the occupants in the boats when these were stopped. They could only have gathered, from the order given by Patzig, that he wished to make use of his subordinates to carry out a breach of the law. They should, therefore, have refused to obey. As they did not do so, they must be punished.

The witnesses, Vice-Admiral (retired) von Trotha, and Toepffer, the President of the District Court (the latter acted during the war as an adviser to the Navy on the law relating to war), admitted frankly that in the German fleet, the impression prevailed that a naval officer, who in the course of a fight exceeded the bounds of the law, was not thereby rendered liable to punishment, although he might be answerable for his action to his superiors. The statements of these two witnesses relate, however, to the point of view, which was held by the higher command in the fleet at the time. They did not maintain that the accused shared this opinion. It appears that neither of these witnesses applied himself to the application of these ideas to the incidents now in question. These opinions are based on a misunderstanding of the law and are irrelevant here. They are of no avail for the accused, because the sinking of the life-boats was not done in the course of a fight, neither in an attack on the enemy nor in defence against him. Although a submarine, while cruising, must continually and in a special degree be ready for fighting, and is always (in the sense of para. 11 of the Military Penal Code) "before the enemy," nevertheless it can do things which are not concerned with fighting.

The defence finally points out that the accused must have considered that Patzig would have enforced his orders, weapon in hand, if they had not obeyed them. This possibility is rejected. If Patzig had been faced by refusal on the part of his subordinates, he would have been obliged to desist from his purpose, as then it would have been impossible for him to attain his object, namely, the concealment of the torpedoing of the *Llandovery*

Castle. This was also quite well-known to the accused, who had witnessed the affair. From the point of view of necessity (para. 52 of the Penal Code), they can thus not claim to be acquitted.

In estimating the punishment, it has, in the first place, to be borne in mind that the principal guilt rests with Commander Patzig, under whose orders the accused acted. They should certainly have refused to obey the order. This would have required a specially high degree of resolution. A refusal to obey the commander on a submarine would have been something so unusual, that it is humanly possible to understand that the accused could not bring themselves to disobey. That certainly does not make them innocent, as has been stated above. They had acquired the habit of obedience to military authority and could not rid themselves of it. This justifies the recognition of mitigating circumstances. In determining the punishment under para. 213, 49, para. 2, 44 of the State Penal Code, a severe sentence must, however, be passed. The killing of defenceless shipwrecked people is an act in the highest degree contrary to ethical principles. It must also not be left out of consideration that the deed throws a dark shadow on the German fleet, and specially on the submarine weapon which did so much in the fight for the Fatherland. For this reason a sentence of four years' imprisonment on both the accused persons has been considered appropriate.

In accordance with Section 34, para. 1, No. 2, Section 40, para. 1, No. 1, and Section 36 of the Military Penal Code, the accused, Dithmar, is dismissed from the service, and the accused, Boldt, is condemned to lose the right to wear officer's uniform.

The behavior of the accused during the proceedings has not been such as to justify reducing the period of imprisonment by the comparatively short period, during which they have already been detained.

The determination of the costs is based on para. 497 of the St. P.O., in conjunction with Art. 1, para. 4, of the law of 24th March, 1920 (R.G. Bl., page 341). The last-mentioned regulation only comes into operation in regard to a prosecution demanded by the Allied Powers in virtue of the Treaty of Peace. Such an accusation is only made against Patzig, but not against the two accused men. The proceedings against them are a direct result of the accusation made against Patzig. The concessions made by a reduction in the costs under the regulations of para. 4 are applicable in the present case. It has therefore been requested that para. 4 may be applied. The expenses, which fall on the State Treasury, do not include those of the accused persons themselves and particularly not those of the evidence put forward in order to obtain their acquittal.

(Signed) SCHMIDT,
SABARTH,
BUCKS,
HAGEMANN,
DR. VOGT.

The members of the Senate, Dr. Paul and Dr. Schultz, were prevented by absence from affixing their signatures.

(Signed) SCHMIDT.

The above copy agrees with the original.

RISCH,
Official.

Clerk of the Second Criminal
Senate of the Imperial High Court.

[Seal of the Court.]

BOOK REVIEWS AND NOTES*

War and Treaty Legislation. By J. W. Scobell Armstrong. London: Hutchinson & Company, 1921. pp. xix, 489. 28s. net.

The legislation of Germany, Austria and Great Britain directed at the private enterprises of enemy nationals is conveniently compiled (in English) in this volume. The volume is divided into four parts, three covering the legislation of each of the three countries mentioned and a fourth covering treaties and treaty legislation. Each part is introduced by a brief explanatory survey of the legislation following, which enables the reader to obtain a general view of the history and nature of the laws treated. These introductions are the bright spots in the volume so far as the lay reader is concerned, for the remainder of the work is a careful reprint of the laws, decrees, orders, licenses, etc., of the three countries affecting enemy property during and after the war. Here in convenient form is an opportunity for comparative study of this kind of legislation which went much further in the late war than in any war of recent times. A comparison with the attitude of belligerents in previous wars, the growth of nationality in the definition of enemy property and enemy enterprises and activities, the effect upon foreign investments of the precedent of controlling, seizing and disposing of enemy property and businesses, and even the proverbial consequence of a bad example, may all be studied in the laws printed in this little volume. Great Britain initiated the legislation aimed to "cut the roots of enemy commercial enterprises" not only at home but in neutral countries. She was followed in this course by Germany on the principle of retaliation, and subsequently though less vigorously and more reluctantly by Austria and Hungary, and lastly by the United States in a gingerly fashion.

The part on treaties and treaty legislation brings together the British Acts relating to the termination of war prior to the treaties of peace, and also data on the legislation and orders of Great Britain, Germany and Austria under the treaties of peace. The clearing office legislation and procedure is particularly interesting and instructive, as, so far as the writer knows, this is the first instance of the establishment of international machinery for the settlement of prewar debts between nationals of former belligerent countries.

The appendices are copious and interesting. They contain tables of general licenses, dates of commencement of war, prewar rates of exchange as defined in the treaties of peace, the German Nationality Law of 1913,

*The JOURNAL assumes no responsibility for the views expressed in signed or unsigned book reviews or notes.

post-Armistice licenses for the resumption of trade, orders relating to industrial property, arrangements for the settlement of prewar debts, rules of procedure of the Anglo-German Mixed Arbitral Tribunal, the German reparations law, etc.

It is not derogatory to the work to say it is largely a compilation, for without the studious, painstaking research among documents, to which this volume is a testimonial, we in America would not have easy access to this body of valuable material and we should be grateful for this convenience.

L. H. WOOLSEY.

Traité de droit international public. By Paul Fauchille. Tome II, Guerre et Neutralité. Paris: Librairie Arthur Rousseau, 1921. pp. xi, 1095. 35 francs.

In 1894 appeared the first edition of M. Henry Bonfils' *Manuel de droit international public*. Because of the author's death, the subsequent editions were edited by M. Paul Fauchille. The second edition appeared in 1898, and showed the condition of international law just before the first of the Hague conferences. The preface to the seventh edition bore date June 30, 1914; and thus it happened that the seventh edition of the *Manuel* must have value forever as a picture of international law just before the outbreak of the World War—a pathetic picture of a hopeful science that was soon to be strained and twisted and insulted.

And now comes, in place of the *Manuel*, M. Fauchille's *Traité*, in two volumes, carefully explaining on the title page that it is in a sense an eighth edition of the *Manuel*, rewritten and brought to date. The first volume, dealing with peace, has not yet arrived; but the second volume, dealing with war and neutrality, shows at a glance the propriety of replacing the modest designation of *Manuel* with the more appropriate designation of *Traité* and of assigning to the present work the name of M. Fauchille; for omissions and additions and rearrangements are countless, the space now given to war and neutrality is three times the space given to those subjects in the first edition by M. Bonfils, and the treatment includes discussions not expected in a handbook. Yet much more important than the changes in title and in method is the fact that this earliest edition of M. Fauchille's *Traité* will have permanent value as a faithful picture of international law as it has been left by the World War. The *Traité* is not warped by national prejudices. M. Fauchille points out, as occasion arises, departures from earlier doctrine by the several belligerents, and his spirit is moderate and judicial.

The text abounds in events of the World War, and in comments showing that it is now difficult to affirm what former doctrines of international law are to be recognized as having been altered through new inventions or new practices. In his last ten pages, M. Fauchille gives the generalization that

in the World War the practices of the belligerents included a reversion to the barbarous conception of war as a contest not between states but between individuals, an enlargement of the doctrines of contraband and of blockade, and a disregard of the rights of neutrals. He does not affirm that international law has been changed, but he does infer that in the respects named, and also in the use of barbarous scientific inventions, future wars will disregard former doctrines unless the rules are made clear and unless there is further international organization and unless there is an actual and active wish on the part of individuals to do international justice—a wish based largely upon a perception of the relation which the welfare of each country sustains toward the welfare of all other countries.

What has happened to international law since 1894 may be easily discovered by comparing M. Bonfils' *Manuel* with M. Fauchille's *Traité*. On angary the first edition of the *Manuel* had hardly more than a dozen lines. The seventh edition was word for word the same, with the addition of one citation. There was no intimation of the importance to be achieved by the topic in some future war. The *Traité* gives five pages, covering both the old and the new applications of angary; and then it goes into the novel question whether angary is applicable in the air. Likewise, aerial warfare, necessarily lacking in the first edition of the *Manuel*, and covering only eleven pages in the seventh edition, covers thirty-five pages in the *Traité*. Similar specifications might be given regarding submarine warfare, contraband, blockade, prize, the Hague conferences, the Declaration of London, and countless other topics. Such comparisons, whether meant to show the relation between the contributions of M. Bonfils and of M. Fauchille or to discover the changes in international doctrine and practice, are facilitated by M. Fauchille's plan of retaining, so far as practicable, the numbers assigned to the paragraphs in the first edition of the *Manuel*.

The *Traité* resembles the *Manuel* in giving ample bibliographies, and also in presenting briefly the views of very many authors. Indeed, besides being a systematic presentation of international law, it is a work of reference throwing open to the investigator vast stores of learning.

EUGENE WAMBAUGH.

Leading American Treaties. By Charles E. Hill, Ph.D. New York: The Macmillan Company, 1922. pp. 399.

This volume of fifteen chapters, partly based on a course of lectures given by President Angell at the University of Michigan, presents the "historical setting and chief provisions of fifteen leading American treaties": Treaties of 1778 (France), 1783 (England), 1794 (England), 1800 (France), 1803 (France), 1814 (England), 1818 (England), 1819 (Spain), 1842 (England), 1848 (Mexico), 1854 and 1858 (Japan), 1867 (Russia), 1871 (England), 1898 (Spain) and the various Panama canal treaties (of 1850 with England,

1901 with England, 1903 with Colombia, and 1903 with Panama). Appended to each chapter is a brief selected bibliography.

The treaties chosen were well selected, and may be regarded as central landmarks in the study of American diplomatic history. The French treaty of alliance made the United States a party in determining the balance of power in Europe (19). The treaty of independence of 1783 was of incalculable value in giving to America a period of rest during the period of European war which began in 1793. Jay's treaty is justified by its result in saving the United States from British and Indians at a critical period. The treaty of 1800 was successful in ending "hostilities which if continued would have made the future annexation of Louisiana improbable". In the treaty of Ghent, although it failed to settle the causes of the war, "the United States had to yield only one point which she had hoped to secure" (indemnity for captures of American ships and goods under the orders in council). The short convention of 1818 with Great Britain, the negotiations of which were doubtless hastened by the critical situation with Spain in regard to Florida, is regarded by the author as "one of the most important to which the United States has become a party". The Webster-Ashburton treaty was the happy result of friendly negotiations of fair minded and well chosen diplomats to reach a just conclusion on a series of issues of paramount importance, some of which "had led more than once to open hostilities locally and had threatened to involve the countries in war". The author states that Webster's declaration on one point—the American principle of protecting crews of American vessels from imprisonment—although omitted from the treaty, "became just as binding upon Great Britain as any separate article in the treaty could possibly have made it". In the number of issues involved, and in the number of questions of long standing dispute settled, he states that "the treaty of Washington (1871) ranks easily as one of the most important in American history"; and, by its enunciation of the principles of international law relating to obligation of neutrals, he says it took rank as "one of the first in the world's history".

In connection with the treaty of peace following the Spanish American War, the author states that the international situation as to Cuba in 1823 and American interests therein was the chief factor which inspired the Monroe Doctrine (pp. 316-317).

The last chapter is the longest in the book. It reviews the evolution of the early interest in the canal, the origin and purpose of the Clayton-Bulwer treaty, the evolution of the American policy of a canal under exclusively American control and the negotiation of the Hay-Pauncefote treaty with England, the Hay-Concha draft treaty and the Hay-Herran treaty with Colombia, and the Hay-Bunau-Varilla treaty with the newly established state of Panama, and the later negotiations with Colombia to remove distrust of the United States and to establish friendly relations between Colom-

bia and Panama. The action of the United States in the case of Panama is justified.

It will be observed that territorial expansion and adjustment of boundaries are among the most prominent facts in relation to these treaty negotiations. Some attention is given to conflicts arising between the executive and the Senate in regard to the treaty-making power.

Considerable attention is given to historical setting of the treaties and their influence on later national development.

While adequacy of treatment has often been restricted by the limits of space, the author has succeeded in presenting a clear narrative of leading facts which will doubtless prove very useful both to college students and to the general reader.

A few minor errors of statement appear. Jefferson resigned from the office of Secretary of State on December 31, 1793 instead of in 1792 as stated (p. 51). The President proclaimed the Florida treaty on February 22, 1821, instead of in 1822 as stated (p. 174). The international controversy concerning seals in Bering Sea arose in 1886 and not in 1868 (p. 260). It was Article IV, and not Article IX (p. 136) of the convention of 1818 which renewed the commercial convention of July 3, 1815. The American policy to purchase Cuba began with the Polk negotiations of 1848, instead of in 1850 (p. 317). The peace commissioners at the close of the Spanish American War met at Paris on October 1, 1898 instead of 1899 (p. 331). President Hayes' Secretary of State was not James G. Blaine as stated by the author (p. 355). The author probably exaggerates English opposition against the United States Government in the American Civil War (pp. 276-277).

Although the narrative is usually clear, the arrangement of materials possibly could have been improved in several instances. Articles II-VII of the Alaska treaty (pp. 274-75) and the paragraph (pp. 259-60) relating to the contents of the treaty might more logically appear following the negotiation of the treaty and before the discussion of it in Congress. The Geneva arbitration (beginning on p. 298) logically belongs after the completion of the brief statement concerning the contents of the Treaty of Washington. The negotiation and provisions of the Hay-Bunau-Varilla treaty (pp. 383-86) should follow the statement of the recognition of Panama (p. 377).

An example of a loose sentence is found on page 286 (2nd paragraph). Another appears on page 329. Examples of paragraphs which lack unity or clearness appear on pages 355 and 359.

There are only a few typographical errors. On page 307 (third line) "among" should begin a new sentence. On page 382 (line 12) "accurred" should be "occurred". Evidently "surprise" (p. 172) should preferably be "surprise".

J. M. CALLAHAN.

Le Principe des Nationalités et les Guerres. Son Application au Problème Colonial. By Bernard Lavergne. Paris: Librairie Félix Alcan, 1921. pp. xii, 211.

With this volume on the principle of nationalities, published in the series *Les Questions Actuelles* under the direction of Émile Borel and Georges Dumas of the Sorbonne, Bernard Lavergne, professor in the faculty of law of the University of Nancy, has made an interesting contribution to a difficult subject. His starting point is the absolute failure of the present League of Nations, as he sees it, due mainly to its own shortcomings, its disregard for the fundamental problems which should have formed its very basis. One of these problems, passed over in silence by the League, according to the author, is that of giving scientific form to the principle of nationalities, which has become such a burning issue during and after the war.

Professor Lavergne divides his book into three chapters: 1. The Complex Theory of Nationalities; 2. The Principle of Nationalities in its Relation to the Colonial Problem; 3. The General Peace Problem and the Pact of the League of Nations.

Calling attention in the first chapter to the fact that the writers on international law are practically unanimous in ignoring or passing briefly over the principle of nationalities, the author reaches his own rather unusual definition of a nation as being "every population that is prevented from becoming a state only by the oppression of a foreign government". In other words, a nation is a state in the making, while a state is a completed, achieved organic structure. He develops two forms of the theory of nationalities, the active form manifested by a demand of the "nation" for secession in order to become an autonomous state, and the more frequent passive form appearing in the desire to be reunited with the mother country.

Five conditions are necessary to entitle a "nation" to become an autonomous state in the active manner, namely: 1. Desire for autonomy; 2. Distinct historical development and traditions; 3. Ability to govern itself; 4. Possession of a population and economic wealth, also a sufficiently extended territory; 5. Sufficient scientific culture. The Russian provinces of Europe, as the Ukraine and the Baltic provinces, do not satisfy these requirements, according to the author, as they have no distinct historical traditions, although the outlying former provinces of Russia, such as Georgia, fulfil the conditions.

For the passive form of achieving autonomy only the desire of reuniting with the mother country is requisite. The desire of Austria to unite with Germany is an example of this. But in certain cases, as when small ethnic groups are located in the midst of a large state, or when the desire is manifested by backward peoples having no developed national consciousness (Macedonia, Albania), the wishes of the population can not be legitimately respected. Nor is Ireland entitled to autonomy, according to the author's

method of reasoning, because it lacks sufficient economic wealth and, once independent of England, would have to become economically dependent upon some other state, which would be inadmissible and impracticable. The principle of equality of all states, large and small, emphasized so strongly during the war, is shown to be applicable only to the modern civilized states possessing real autonomy, not, for instance, to the Asiatic or African states. In Professor Lavergne's opinion the nations made a grave error when they pronounced the principle of free accession in the two Hague conferences, especially in the second. To him it is one of the reasons for the "semi-sterility" of these conferences.

In his second chapter the author takes up the question of colonization. Although the prime motive of colonization, he frankly states, is the enrichment of the colonizing nation, colonization is not incompatible with the principle of nationalities for two reasons. In the first place, as far as the colonies are concerned, it is not unjust, as it overturns nothing and violates no national sentiment among the natives, who do not possess such a sentiment. In the second place, colonization is beneficent to the colony economically and otherwise, provided always that the work of colonization is carried on in a spirit of justice and humanity by the colonizing power. This leads the author to a discussion of the French system of colonization. He finds it sound on the whole, although he deplores the French practice of allowing the colonists to elect deputies to the French Chamber and thus to deal with questions not concerning them.

The final chapter reviews once more the principal defects of the present League of Nations, as the author envisages them, namely its lack of basic principles and its non-conformity to any clear-cut type. He says that there are four distinct types of groups that the peoples of the world may form with a view to international order, to wit: 1. The old-fashioned, thoroughly discredited political alliance; 2. The judicial alliance, which failed to function in 1914; 3. The federal league, approached imperfectly by the present League of Nations; 4. A superstate or permanent federal union, that is, an international, universal group possessing an autonomous legislative council and an executive power, each with the right of absolute command in its particular sphere, the union having permanent binding force upon each member state and conditioning a frank renunciation of some sovereign rights on the part of each. This last alternative is the author's ideal. Differences arising between nations, he claims, are questions of power and are not reducible to simple questions of law. As life means motion, so there will always be struggles between peoples. At present they are manifested in war. However, war must be replaced, not by a court of justice, but by an international legislative assembly with well-defined powers, wherein each state is represented by delegates. In this assembly the author would have the future battles of the nations waged in a parliamentary manner, just as now the political party issues are decided in the national parliaments. A

court of justice, he says, is insufficient and inadequate, for it is not a question of judging but of legislating. We have experimented enough with wars, diplomacy and courts of justice in vainly attempting to bring about peace on earth, he argues. It only remains to try the international, world-embracing parliament.

The foregoing résumé of Professor Lavergne's argument will be sufficient to give the reader an idea of his line of reasoning. Such a book is easy to criticise. For one thing, its three chapters are not sufficiently connected in plan or thought, and a better, more exact title could be found for the work. Again, many Americans will be inclined to smile at the solicitude with which the author argues for his ideal international parliament, which he himself admits still lies far in the future. This is only another indication that Europeans are by force of circumstances taking problems of future international organization much more seriously than Americans. It might also be said in criticism that while the book begins as a theoretical study of the principle of nationalities it ends as a *Tendenzschrift* and that it is unfair to the principle of the judicial settlement of international disputes. But in spite of its shortcomings, whatever they may be, the book is a stimulating piece of work and reveals careful, logical thinking.

EDWIN H. ZEYDEL.

The Conduct of American Foreign Relations. By John Mabry Mathews, Ph.D. New York: The Century Company, 1922. pp. vii, 353. \$3.00.

This book is a study of law and practice in the management of our foreign relations. The author shows the basis and modes of control, describes the central organization, the diplomatic and consular service, shows how treaties are made and enforced, and how we enter into a state of neutrality, war and peace.

There are many books on our foreign relations, but this is the only one devoted to an exposition of how they are conducted. The author has smooth sailing when he describes the basis and machinery of control, but the waters become rougher when he describes the powers in treaty-making of each house of Congress and of both together and what are the untrammelled powers of the executive. Here we find much of conflict beginning when the government began and not yet settled. The principal sources of the book are: Moore's *Digest*, Butler's *Treaty Making Power*, Crandall's *Treaties, Their Making and Enforcement*, John W. Foster's *Practice of Diplomacy*, Corwin's *The President's Control of Foreign Relations*, W. W. Willoughby's *Constitutional Law of the United States*, the volumes of *Foreign Relations of the United States* and the *Supreme Court Reports*, the richest mines of information being the *Supreme Court Reports*, *Foreign Relations* and Moore's *Digest*. The man who knows these three works thoroughly knows American international law.

Dipping into the middle of the book, the most important section is that which treats of treaty-making, and here Mr. Mathews draws a distinction between the "practical influence" of the Senate and the "legal control" of the President. The Senate may give its advice during the progress of treaty-making, but this is not necessary; or it may grant or withhold its consent to the ratification of the treaty which is necessary. The Executive is wise if he seeks the advice with a view to obtaining the consent. That the Executive and the Senate should each so jealously guard over its authority Mr. Mathews thinks coincides with the purpose of the framers of the Constitution, because they aimed to curb power. The House, too, has interjected itself into treaty-making, being a part of the machinery necessary to pass laws and appropriate money, which often are necessary to put treaties in force. In 1796 the House called on the President for the papers in the Jay treaty and he refused to send them. Similar instances of conflict have occurred since then without determination of the question of legal obligation. The House takes the action which the treaty requires after some of the members have made speeches insisting that it is not obliged to do so. Mr. Mathews thinks that the inclusion of the Senate in the treaty-making power has proved to be a wise provision in the government, but that a minority of the Senate should not be allowed to block action on a treaty and that a majority should be sufficient to approve the ratification, at any rate if the majority represents states having more than a majority of the population of the country. In advocating approval of treaties by a majority of the Senate, Mr. Mathews has companionship, but that a majority of the population should be potential through Senators is a novel idea. The reviewer thinks that such an important law as a treaty, limiting, as all important treaties do, the sovereignty of the nation, should have general acceptance. A bare majority of one body of the legislature should not have unchecked power over national rights. Ours is not a government of the unchecked will of the majority. As for counting a majority of the population through representation in the Senate, the effect of doing so would be to destroy the foundations of the Senate. What would happen if the Senators from the same populous state took opposite sides on the question of approving a treaty? The subject is too large to be pursued here, however, and it is only fair to say that Mr. Mathews shows little interest in his own suggestion, as he says nothing in support of it. It plays no part in the development of his book.

The power of the President looms large on every page. In some fifty instances he has landed armed forces on foreign soil to protect American interests, acting under his own authority as Commander in Chief of the Army and Navy and under general international right without specific congressional authority. This part of the book would have been stronger without the quotation from Mr. Taft.

Mr. Taft says: "In practice the use of the naval marines for such a purpose has become so common that their landing is treated as a mere local

police measure, whereas if troops of the regular army are used for such a purpose it seems to take on the color of an act of war". Troops were landed in China in the Boxer troubles and in Mexico to coerce Huerta, and more recently in Russia (to mention only a few instances), and we insisted that the acts were not acts of war. Marines and blue jackets are armed forces as well as soldiers, and Mr. Mathews himself makes no such distinction as Mr. Taft implies.

The chapter on the agreement-making power recites numerous international agreements which have been made by the Executive alone. When they are the result of specific authority of law they are unobjectionable; but when they are initiated on the President's authority they raise suspicion, for they may be secret and they tend to diminish the Senate's rightful authority. However, we must remember that international agreements made by one Executive may be set aside by his successor; consequently, they lack certainty and stability and foreign governments would not be apt to accept them in important matters in lieu of binding treaties.

The book closes with an account of the modes of declaring war and making peace. Congress thus far has never declared war except upon the recommendation of the President. By inference, the power to declare peace resides in the same place with the power to declare war. The President negotiates the treaty of peace, but before the treaty is completed Congress may declare that a state of peace exists. Mr. Mathews narrates the proceedings of Congress in April, 1917, when war was declared on Germany. Mr. Wilson's message of April 2 recounted our grievances against Germany and added certain other objects for which we should fight—notably "To make the world safe for democracy". Congress, however, placed the justification for war simply upon Germany's repeated acts of war against the Government and people of the United States.

This is a good book, well conceived, well executed, and serving a useful purpose. It will soon pass into general use among students of our foreign affairs.

GAILLARD HUNT.

Manual of Collections of Treaties and of Collections relating to Treaties. By Denys Peter Myers, A.B. Printed at the expense of the Richard Manning Hodges Fund. Cambridge: Harvard University Press, 1922. pp. xlvii, 685. \$7.50.

This book is the second in a series of bibliographies printed by the Harvard University Press, the first having been on the languages, history, etc., of Slavic Europe by Robert Joseph Kirmer, Ph.D. The preface, contents and a few other lesser portions are printed in French as well as English, but the titles are in all languages and few of the books and periodicals have been translated. Mr. Myers' arrangement is: General Collections, Ancient, Mediaeval and Modern, collections by states, collections by sub-

ject matter, collections by international administration and as an appendix The Publication of Treaties. Upwards of 3408 separate titles are cited.

The purpose of the book is to place a list of books and articles relating to his subject before the student of international agreements. The basis of Mr. Myers' work is the lists of Martens, Garden, Martitz and Clunet which he has brought together and added to. The book is not a list of treaties but of books about treaties and which contain treaties.

The painstaking industry and exhaustive research of the compiler reflect great credit upon him and it is apparent that the book will be very useful. It takes its place among the essential works.

GAILLARD HUNT.

The Fiscal and Diplomatic Freedom of the British Oversea Dominions. By Edward Porritt. Oxford: The Clarendon Press. 1922. pp. xvi, 492. (Publications of the Carnegie Endowment for International Peace, Division of Economics and History.) \$4.00.

Co-ordination. Inasmuch as it deals with diplomatic freedom only in connection with fiscal affairs (p.10), this book falls short of the promise of its title. Within the more limited scope, its principal value is (1) that it is a creditable attempt to compare, contrast, and, as it were, co-ordinate political development in various of the Dominions, instead of, as is usual, tracing the unrelated history of only one of them; and (2) that the author's familiarity with British political history has enabled him to point to the influences which, from time to time in London, aided or retarded the expansion of colonial freedom. Works confined to Canada, by omitting references to the Australian Act of 1850, its modification in 1873, and its repeal in 1895, leave us uninformed as to British policy with regard to differential rates of customs duties in colonial tariffs, while, on the other hand, the Australian books tell us little of the struggle for responsible government and the acquisition of freedom with regard to protective duties. The Colonial Office attitude with reference to bounties and bonuses, too, is one that must be studied not in a single colony but in various of them. And the changing influences of the ever-changing Colonial Secretaries must be noted as the stories develop. In these respects Mr. Porritt's book, if not altogether unique, has special value.

On the other hand, the author has paid little attention to analysis or orderly arrangement. Freedom to enact tariffs is a part of general legislative freedom. Its history cannot be altogether separated from the whole of which it is a part, nor indeed from the story of the acquisition by the colonies of responsible government. This the author recognized, but he has had little success in coping with the difficulties which it raises.

Responsible Government. If the struggle for responsible government (an executive responsible to the House of Commons instead of to the Gover-

nors) had been successfully terminated before the efforts to obtain tariff and treaty freedom commenced, the author might well have introduced his special subject by so saying, and by giving us the dates of the end of the one and the beginning of the other. But the date-relations are confused, and the year of the conclusion of the earlier contest is very variously stated.

On p. 61 (see also p. 234) it is said (when referring to the British North American provinces) that "Complete success attended the movement for responsible government in 1849. The question was settled when Parliament at Westminster in this year voted down resolutions" &c. This statement is contradicted at p. 93, where it is said that these decades (1846-1873) "were the decades in which the North American provinces were struggling for responsible government." It is contradicted also by the assertion on p. 111 that 1841-1859 was in Upper and Lower Canada "the period during which the contests for responsible government and for fiscal freedom were going on." Again, on p. 223 it is said that "the real contest for responsible government began . . . in 1841. The struggle was over and complete success achieved . . . in 1854." At still another place (p. 222) it is said that the movement for responsible government "began in Lower and Upper Canada in 1828," whereas in Lower Canada the movement was not for responsible government but for an elective Legislative Council. On p. 250 it is said that responsible government was conceded to Nova Scotia and New Brunswick in 1848, to Prince Edward Island in 1853, and to Newfoundland in 1855; while at p. 268 it is said that "responsible government was established in New South Wales in 1850 and in Victoria and South Australia in 1854."

There can be little objection to fixing 1849 as the end of the struggle for responsible government, although, if a specific year must be mentioned, 1847—the year of Elgin's arrival in Canada as Governor—might be preferable. But the action of the British Parliament in 1849 to which the author refers had no relation to responsible government. The question there was not whether a Governor should follow the advice of his ministry, but whether a statute of the Canadian Parliament should be disallowed by interposition of the Crown. Had the author adhered to the 1849 date, and had he recognized that the struggle for fiscal freedom commenced (substantially) after that year, he would have been saved much of the confusion of Part IV of his book (pp. 213-281), entitled "Responsible Government and Fiscal and Diplomatic Freedom." Of responsible government he need have said little.

Fiscal Freedom. Free trade, as preached by Cobden and Bright, being as much an evangel as an economic principle, British governments, while releasing the colonies from the restrictions of the commercial system and the navigation laws, were unwilling to agree that any of the impediments of the old system should be introduced there—either protection or preferences, either bounties or bonuses.

The story with reference to protection (separated from the rest of the story of colonial political development) is a short one. The Canadian Parliament enacted the Cayley tariff in 1858 and the more important Galt tariff in 1859: in these, duties protective as against British goods were imposed; but the statutes, nevertheless, were permitted to go into operation. And, in consequence, no later colonial protective tariffs, in either the British American or Australasian colonies, were interfered with (p. 224). From his relation of these facts the author omits the extremely noteworthy communication of protest from the Canadian Government. It is one of the most important documents which ever left Canada, and is rarely overlooked.

Canada led the way also with reference to differential or preferential tariffs by providing in 1850 for reciprocal advantages with the other British American colonies (p. 154). Taking warning by this, the British Parliament, in arranging the constitutions of Australian colonies, inserted a clause prohibitive of such departures from the principles of free trade. Efforts for release from the restriction were partially successful in 1873, but completely only in 1895. Mr. Porritt tells the story, but disjointedly (pp. 93, 94, 111, 116, 118-21, 123, 134, 136, 278-9). The subjects of bounties and bonuses are adequately dealt with, but again disjointedly (pp. 85, 87, 99, 111, 114, 128-32, 137, 218).

Dealing with the veto on colonial legislation, the author finds it necessary to speak of statutes other than those of fiscal character. Interference with tariff legislation alone could have been very shortly dealt with. To the larger subject, the author devotes four chapters (pp. 252-281), and from them is omitted much that ought to appear in a general survey,—for example, the conflict over the Canadian bill with reference to copyright. In other words, in this connection, as with reference to responsible government, the author has been able neither to separate his subject from the general story of political development, nor, on the other hand, succinctly to indicate the affiliations.

Era of Indifference. In various other respects, the author has fallen into mistake. For example, at p. 283 he says,—“The era of indifference to over-sea possessions . . . extended from the loss of the North American colonies to the first Jubilee of the reign of Queen Victoria in 1887,” and he divides the era into three periods: 1783-1859; 1859-1873; and 1873-1887 (pp. 283-4). Dating British indifference back to 1783 is to make incomprehensible the whole story of the persistent resistance of British statesmen to colonial efforts for responsible government. One effect of the American Revolution was to make clear that such colonies as Canada would some day assert their independence, but the other effect was to induce study of methods by which the arrival of such misfortune might be postponed. On 20 October 1789, the Colonial Secretary sent to Lord Dorchester (Governor in Chief of the British North American Colonies) a memorandum in which was elaborately discussed—“by what means the connection & dependence

of Canada, on this country, may be so preserved, & cultivated, as to be render'd most beneficial to Great Britain, during its continuance, & most permanent in its duration." Eventual independence was unavoidable, "But the real question now to be decided is, what system is best calculated to remove this event to a distant period & to render the connection, in the interval, advantageous to the Mother Country without oppression or injury to the Colony" (*Canadian Constitutional Documents, 1789-1791, Part II*, p. 982).

Indifference to retention of Canada arose and increased only as her value diminished. While her trade was regulated by the statutes of the British commercial system and by the navigation laws, anxiety, rather than indifference, was the attitude of the Colonial Office. Every exhibition of tendency toward self-government was countered. The Colonial Office was "the office at war with the colonies" (p. 312), and finally drove the Canadas into rebellion against it. The colonies were valuable, and the colonies must be retained. Adoption of the principles of free trade in commodities, and unrestricted access of foreign shipping, was the explanation of the commencement of the era of indifference. The colonies had ceased to be of value, and the colonies might go. That was natural. Termination of the indifference came, not in any particular year, but gradually with the growth of conviction that Canada had once more become valuable,—this time for her fighting capability.

Not recognizing this last mentioned fact, the author explains the end of the era of indifference by British loans for railway and other purposes; by emigrations which "created another link of empire and also stimulated a more widely extended popular interest in Great Britain in the dominions" (p. 403); by the work of the Royal Colonial Institute; by the propaganda of the Imperial Federation League; by the meetings of the Chambers of Commerce of the Empire; by the Colonial Conferences; by "the appearance on the scene of Germany as a new European competitor for oversea possessions" (p. 405). Most of these movements had but the slightest relation to the British change of attitude, and it was the desire to combine the colonies in a war-union (a *kriegsverein*, to use Lord Salisbury's word) that actuated the Imperial Federation League, and that engaged the attention of the first of the Colonial Conferences. The later meetings have all dealt with the same subject. Very clearly, then, until the adoption of free trade, while Canada was of enormous value to the United Kingdom, there was no British indifference. And after Canada became of military value, there was none. Between these periods, Canada was of no value, and was somewhat unanimously told that she might as well "cut the cords and go." That is as one would have expected.

Treaties. The author's treatment of the treaty-making power of the colonies is complete, if the phraseology employed is somewhat faulty. Commencing with the demand of New Brunswick in 1850 for "full power to treat

with foreign nations on all subjects of trade and shipping" (p. 168), the author proceeds to discussion of "the next definite claim for representation in treaty-making," not observing that representation was not at all what New Brunswick had demanded. Chapter V has in its title "The claim of direct representation in treaty-making conceded" (p. 173); but the only claim was that persons should be permitted "to proceed to Washington in order to confer with the British Minister there, and to afford him information with respect to the interests of the British North American provinces" (p. 178; and see pp. 184-5). That was all that was conceded, and to it the author attaches unmerited significance (p. 186; see note 4 on p. 189). Not until a later year (1884) was the Canadian representative associated with the British and given, in effect, the conduct of the work of negotiation (p. 191). A later Colonial Secretary, Ripon, did not like that situation, and, in his despatch of 28 June 1895, declared that "To give the colonies the power of negotiating treaties for themselves without reference to her Majesty's government would be to give them an international status as separate and sovereign states, and would be equivalent to breaking up the Empire into a number of independent states" (p. 195). He added that nevertheless "it would be desirable, generally, therefore, that he [the British diplomat] should have the assistance, either as a second plenipotentiary or in a subordinate capacity, as her Majesty's government think the circumstances require, of a delegate appointed by the colonial government" (p. 196).

The Ripon limitations were disregarded, and the right of Canada to negotiate her own commercial treaties was recognized in 1907 in connection with the arrangements for the Franco-Canadian treaty of that year. Freedom to negotiate such treaties had thus been achieved (pp. 198-212). But while it is true as the author says that the movement for it "was a direct and immediate outcome of the successful assertion of fiscal freedom" (p. 211), it is not correct to add "in the years from 1850 to 1867 by the British North American provinces." The successful assertion was in 1859—as above stated. It will be observed that Canada was well on the way to freedom to make treaties while the Australian colonies were still under statutory inhibition to grant preferences outside Australia.

Minor Points. Chapter VIII opens with an interesting forecast of "Seven distinct Crises"—of "seven occasions in the period from 1846 to 1907 on which the Colonial Office and Governments in London had to decide whether they would make concessions to demands from the self-governing colonies for larger powers over their fiscal legislation, or over developments growing out of the power which had accrued to them in connection with their fiscal and commercial policies" (p. 154). The first was in 1850, when a Canadian statute providing for differential duties with other British American colonies was allowed to go into operation (pp. 154-5, 278). The second was in 1859, when the Galt statute providing for protective duties was allowed to go into

operation (p. 155). The third, referred to in a later chapter, had reference to Canadian representation during negotiations at Washington (pp. 161-2). After fifty pages of extraneous matter, the fourth crisis is stated to have been the Australian struggle of 1867-73 for the power to enact preferential tariffs (pp. 212, 278, 389). For specification of the remaining three crises the reader is left to his own insight. At p. 14 is the statement that "Revenue derived from the duties imposed by British Possessions Acts was, in accordance with the terms of sections in these acts, covered into the treasuries of the provinces." It was one of the principal grievances of the Opposition leaders in Lower Canada not only that these revenues were not so placed, but that until about 1818 the Governors would give no information as to their amount.

When referring to the opposition of the Colonial Office to the waywardness of the colonies with regard to lapses from free-trade principles, Mr. Porritt frequently mentions "the Government propaganda for a free trade Empire" (pp. 79, 111, 112-117, 194, 389). Of propaganda in the ordinary sense, there was none. Colonial Office interference is not propaganda.

It is far from accurate to say of the Dominions that "all these political civilizations, with their parliaments, cabinets, executive departments of state, and judicial systems, are fashioned to the last detail after English models" (p. 19). The Dominions have no hereditary and ecclesiastical House of Lords. They have no combination of judicial and political functions in a Lord Chancellor and various Law Lords. And their Senators have no appellate jurisdiction over the laws courts. Other differences could easily be mentioned.

In various places the author refers to the Dominions "status of nation within the British Empire" (pp. 19, 43, 64, 408). Being without meaning, the phrase is one into which may be poured any notion one chooses to select. Whatever the author may have intended, it is not true that "Restrictions on fiscal legislation excepted, the colonies in the North American group, . . . the colonies in the Australasian group, and the Cape Colony were, in 1867-1873, quite near the present status of nation within the Empire" (p. 225). In a footnote to this statement, the author quotes from Mr. Lloyd George: "The British Empire is a League of nations,"—a rhetorical phrase that ought to be left to the platform and the newspapers.

When explaining the meaning of the ever-recurring Canadian phrase "national policy," the author says that it included, "(1) the continuous and wide immigration propaganda for the peopling of the provinces west of the Great Lakes, and (2) the development of the national grain route, by rail, lake, and canal from all the grain-growing provinces to tidewater ports on the Atlantic" (p. 121, note). That is incorrect.

When referring to Mr. Joseph Chamberlain's tenure of the Colonial Secretaryship, the author says, "a tenure that is recalled with satisfaction in the capitals of the Dominions from the fact that it was in 1898 that the

self-governing colonies were at last freed from the fiscally hampering articles of the Prussian treaty of 1865, and of a score of other commercial treaties made by Great Britain before 1878 to which the self-governing colonies had not been consenting parties" (pp. 199-200). The Prussian and Belgian treaties were denounced in 1898. The others were not. At the Imperial Conference of 1911, a resolution was passed recommending that action in that respect should be taken. Mr. Chamberlain's tenure of office is specially remembered in Canada because of his imperializing efforts, which Sir Wilfrid Laurier successfully withstood. Mr. Chamberlain wanted contributions to the British navy; the enrollment of colonial troops for service in foreign countries; the establishment of an Imperial Council which would develop into an imperial parliament with powers of taxation, &c. Canada's "satisfaction" is that she escaped these things.

Conclusion. While it is impossible to disregard the defects of Mr. Porritt's book (some of which may have been due to failing health and inability to revise the proofs), acknowledgment must be made of its many merits, the most conspicuous of which are (1) the co-ordination above referred to; (2) the useful and scholarly collection of relevant and (upon the whole) accurately stated facts, made accessible by a good index; and (3) the appendices of sixty-one closely printed pages, in which may be found many of the documents referred to in the text.

JOHN S. EWART.

The Secret Treaties of Austria-Hungary 1879-1914. By Alfred Franzis Pribram. 2 vols. English edition by Archibald Cary Coolidge. Translated by J. G. D'Arcy Paul and Denys P. Myers. Cambridge: Harvard University Press, 1920, 1921. pp. xvii, 308; ix, 271. \$2.00, \$3.00.

Volume I contains a series of treaties, conventions and declarations that are related to the policies of the Central Powers and of Italy together with an introduction by Professor Pribram.

The main treaties that interest us are those of the Austro-Hungarian-German Alliance of 1879, which, from that time to the end of the world war, was the basis of the mutual relations of the Central Powers, and the kindred but independent and more famous Triple Alliance of Austria-Hungary, Germany and Italy. This alliance beginning in 1882, was renewed with changes in 1887, 1891, 1902 and 1912. It was embodied in five distinct treaties. But we are also interested incidentally in documents, now also collected here, of the League of the Three Emperors, the Reinsurance Treaty, and various other alliances, in some of which we find Rumania having common understandings with Austria-Hungary, Germany and Italy; of Austria-Hungary with Serbia, and of Austria-Hungary with Russia on Balkan affairs; a political agreement for the preservation of the *status quo* in the Mediterranean which was inspired by fear of French extension

between Great Britain, Austria-Hungary and Italy dating back to 1887; and a naval agreement for united action between Austria-Hungary, the German Empire and Italy which went into force as recently as 1913.

Volume II contains an account of the various negotiations relating to the five treaties of the Triple Alliance and to Austro-Russian agreements, the Dual Alliance, and Franco-Italian agreements, with some of the documents mentioned in an appendix. The understandings of Italy and France were inconsistent not only with the supposed antagonism of those countries towards each other, but with Italy's loyalty to the Triple Alliance; and with a special treaty between Italy and Germany which in case of war followed by the taking of guaranties involved French interests in northern Africa and even looked to accessions on the Italian border of French home territory itself. These inconsistent understandings of Italy and France, however, apart from changes in political interests that developed later, gave some excuse for the participation of Italy on the side of France in the world war.

The texts of the agreements, which were written in French or German, are printed on the left hand page and the English translation on the right; so that, the reader's eye may conveniently run from one to the other at will. Mr. Myers, whose familiarity with treaties is well known, is the principal translator of the French and Mr. Paul of the German originals; both of which are rendered into smooth English.

The author's introduction, which appears in the first volume, is helpful to a clear understanding of the succession of treaties of the Triple Alliance and may suffice for the general reader if he cares to go no farther; while the story of the negotiations, which with its short documentary appendix fills the second volume, presents sufficient detail to be a valuable help to the specialist. Both volumes taken together make an exceptional source book and commentary.

Professor Pribram's information is taken chiefly from Austro-Hungarian archives which became accessible after the fall of the Dual Monarchy and is necessarily partial because it needs supplementing from the records of the German and Italian foreign offices, but though it reflects a critical spirit on the part of a patriotic scholar it is set forth in a temperate manner.

The complete texts of the treaties of the Triple Alliance were first brought to light by Professor Pribram and their publication together with the history of the negotiations is the chief reason for making his book. The exact wording of the treaties of the Triple Alliance, except for four articles, is new to the public. We now know that there were as many as fifteen articles in their later stages, the contents of some of which had not been surmised before. The treaties of the Triple Alliance were supposed to be defensive, and so they were to a large degree, but they might also have become aggressive in certain contingencies. This was particularly the case in respect to the Balkans and to questions relating to the Ottoman coasts of the Adri-

atic and the Aegean Seas, which when settled on the breaking up of the Turkish Empire were to be adjusted between Austria and Italy on the basis of mutual compensations; and in respect to North African acquisitions, the settlement of which, though the Egyptian question was left undisturbed, was to redound to the benefit of Italy, even though that meant war by Germany and Italy with France, who was Italy's principal rival.

We must express our thanks to Professor Coolidge, the American editor, for his rearrangement of the material of Professor Pribram's book in order to make it less bulky than, with translations added, it might have been as originally published, as well as for certain notes and headings that he has added for American readers, and we must remark the persistency of Professor Pribram himself in carrying out his plan not only to reveal the actual contents of the treaties but to give an exhaustive account of their negotiation. Although the narrative is loaded with details, is lacking in interesting character portrayal of the individual statesmen who were connected with the transactions, and is without dramatic touches, it makes steady progress, ends with a climax, and presents a picture of the mind of a nation. That nation is Italy, to whose ambitious and clever diplomats the author pays tribute even though he doubts whether, in view of their new Slavic neighbors on the Adriatic and continued French domination in the Mediterranean, they have put their country in a better position than she held before the war. Italy, if the author's argument is to be accepted, secured by appeals, lamentations, flatteries and threats, many advantages from Austria-Hungary and Germany in the time of their necessities. She, flirting with France, England and other countries, at the same time, was suspected by the Central Powers of being an undependable partner and, in the author's mind, gained in financial strength, increased as a great Power, and carried out imperial policies which would have been impossible without the alliance; but Germany and Austria reaped some advantage from it. If Germany had become engaged in defensive war with France, Italy would have been expected to aid and in any case not menace Germany, or if either Germany or Austria-Hungary were drawn into a defensive war with a non-signatory great Power, *e. g.*, with Russia, which was always a possibility, neither had to consider the likelihood of attack from Italy at the same time, as under these circumstances Italy was pledged to benevolent neutrality. In fact Italy kept neutral when the Central Powers began war with France and Russia. Without Italian neutrality at the outset the Central Powers could not have made their initial successes, either on the Western or Eastern front. Had their warfare been strictly defensive, Italy, under the terms of the alliance, could have been expected to stand by them.

Among the things that impress one who reads the treaties and the story of their negotiation are the secrecy about them, which was successfully maintained; the unfortunate situation in which this world has been placed by a system of independent states in which each may add the territories of

weaker states to its possessions, if with its own strong arm or with the potential help of an alliance like the Triple Alliance, it can keep its rivals from interference and from extension, a system that seems to have reached its culmination and to have begun its decline in our own time; the logical necessity, however, of alliances and of a balance of power so long as independent imperialistic nations exist; the wisdom of having kept the United States practically out of alliances up to this time; the desirability of still keeping our country clear of them, in the future; and the need of an international organization based upon the mutual interests of all nations rather than on the special interests of some of them; of juridical methods rather than methods of force; an organization in which alliances and secret treaties have no place.

That the whole arrangement of the Triple Alliance, therefore, has gone by the board is one of the greatest blessings of the world's upheaval; and it should be the hope of every lover of mankind that a better order of European relations may take its place.

JAMES L. TRYON.

Intervention in International Law. By Ellery C. Stowell. Washington, D. C.: John Byrne & Co. 1921. pp. viii, 558.

In this volume Mr. Stowell has industriously and successfully gathered together data relative to many interventions which have taken place between nations, for purposes of redress, expiation, indemnity, security, or punishment, devoting much attention particularly to humanitarian intervention. In our point of view, and in the present chaotic state of what passes under the name of international law, the book has the value resultant upon industrious labor and judicious collection of instances. We can not believe, however, that it is written upon the theory of international law which, with growing civilization among men, must be accepted if sound reason and the highest ideals of justice are to prevail. The author accepts too readily, we conceive, the principle that might makes right, coupling this with the idea that that which has been done by nations, if repeated sufficiently often, makes law. Of course as to things indifferent in themselves the practices of nations may make sound customs, but the practice of the stronger to lay down rules of action for the weaker, which is almost universal in cases of intervention, is quite another matter. This distinction Mr. Stowell ignores, but may only be criticized for this to the same degree that other writers, who feel that they are laying down international law, may be subjected to the same criticism. Our position in this respect may be elucidated by examining some extracts from Mr. Stowell's work. He says, for instance:

It sometimes happens that a weak or harassed government is unable or unwilling to compel its nationals to observe International Law. In such a situation, the State whose nationals or whose interests are endangered may act directly to compel the observance of International Law.

If Mr. Stowell had simply said that in such cases States often use violence, he would have been more nearly correct, and if he had observed that nations only so act when they feel themselves to be very much stronger than the nation supposed to be in default, he would have made an observation justified by the instances he cites.

Mr. Stowell points out the difficulties which arise within a community when individuals seek revenge on their own account, and he finds that thereby the "avengers were constantly embroiling the community in order to gratify their more selfish lust for revenge." That an infinitely greater and more intolerable evil exists when a nation becomes its own avenger, and that such action is in itself a violation of true international law, Mr. Stowell, we regret to say, does not appreciate. Particularly he regards a supposed loss of prestige as a justification for bloody intervention. Exactly why this should be true when similar actions are not justified on the part of an individual in like case, or why the wholesale slaughter of men to restore prestige should be more virtuous than individual killing does not appear.

An illustration of the repetition of the old idea that superior force is its own law is furnished by Mr. Stowell when he says that in settlement of the Alabama Claims the American demand for indirect losses was not allowed, "but if war, instead of arbitration, had settled the controversy, there would have been no legal objection to the collection of the indirect losses, provided that the result of the recourse to arms had been sufficiently favorable to the United States." It was by virtue of a general principle of law, thoroughly recognized in England and in the United States as between private individuals, that indirect losses were not allowed. In other words they were not treated as either legal or right. A successful war, however, in Mr. Stowell's opinion, would have changed the legal situation and converted that which was originally illegal into legality.

It can not be admitted that anything which may properly be called law can be changed in its nature by a show of superior force, and so long as what passes as international law recognizes the contrary, it will fail to be a science or worthy of respect.

Mr. Stowell finds that "when a State exacts redress for the injury to its prestige or interests, it protects society by making it certain to all who harbor evil designs that the transgressor will be brought to book." Inasmuch as such exaction of redress never takes place except the attacking nation be stronger than the supposed offending nation, Mr. Stowell's statement can only be true when the offender is the weaker. He leaves, therefore, the nation superior in power with full liberty to harbor evil designs without fear of being brought to book. But after all, who is to determine that the weaker nation has wrongfully affected the "prestige or interests" of the stronger? So long as the stronger nation alone settles this matter, there can be neither law nor justice controlling the situation. The whole statement, therefore, amounts simply to an assertion that if the weaker nation does something

that the stronger nation conceives prejudicial to it, the stronger nation can attack and inflict its own punishment. This may be true as a statement of fact, the fact being that the stronger nation is a law unto itself, but it is not a statement of anything that may be regarded as fundamental international law.

Again illustrating his idea, Mr. Stowell states that, "In view of the many instances in which bombardment and drastic measures have been employed, it is hard to deny that there is a presumption of legality in their favor." In other words, it would seem from Mr. Stowell's declaration that the more often under circumstances of brutality, stronger nations have taken vengeance into their own hands, the more convincing the proof of their right to be judges in their own cause and to inflict death upon innocent people in no wise connected with the offense. It would seem that the multiplication of ciphers somehow creates a positive quantity. True international law can not be so written.

All we have said is not a discussion as to whether war is or is not proper or justifiable. It is simply to point out that law is one thing and that the organized chaos (paradoxically speaking) called war is another and entirely different thing. Confusion upon this point on the part of international law writers has made their teachings a mockery to the laymen, who will not regard international law seriously till a bill of divorcement has been signed between it and war in all its phases. The two do not belong in the same bed.

In the present state of barbarism in international law, or pseudo international law, the usefulness of Mr. Stowell's book and the occasion for its writing may not be denied.

JACKSON H. RALSTON.

La Liga de las Naciones—Trabajos de la Segunda Asamblea. By Cosme de la Torriente. Habana: Imprenta y Papelería de Rambla y Cía., 1922. pp. 260.

The above is a report made to the President of Cuba by Señor Cosme de la Torriente in his capacity of president of the Cuban Delegation to the Second Meeting of the League of Nations. The report is divided into fourteen parts followed by several appendices, eight in number, which complete and illustrate the text. The first twelve parts of the report cover some explanatory and historical antecedents, organization of the Assembly, personnel of the various committees created and the proceedings and resolutions and recommendations adopted.

Part XIII of the report contains some interesting remarks in respect to the League:

The League has already accomplished something, but has not as yet carried out all the program announced in the Covenant either expressly or by implication. For instance, little has been accomplished in the

way of centralization, the true internationalization of all offices, commissions or international unions existing under general conventions. It is, however, impossible at the present time to accomplish anything really complete from an international point of view, unless the world can be assured of the great spiritual and material support of the United States of America; moreover, the absence of this powerful State from the League is solely responsible for the perplexities felt in some quarters in respect thereof, and specially for the present delay in accomplishing two of the most far-reaching reforms which the League is endeavoring to introduce in the relations between nations, namely, the practical reduction of armaments and the establishment of the economic blockade.

The Covenant is not, nor can it be, perfect. The necessity of amending its provisions is quite evident; and in the amendments to be introduced, attention should be given to the organization of the Council, reinforcement of the authority of the Assembly, over certain questions, without thereby giving rise to situations which might be inconsistent with the sovereignty and individual interests of the States members of the League. There is urgent need, on the other hand, of special reforms to facilitate, in the future, the admission of the United States to the League; and these reforms should come from, or rather originate with the delegations of the American members. Perhaps the American foreign offices should not further delay the work of drafting a plan of amendments to the Covenant with this end in view.

There is a great Pan-American interest, and a universal interest as well, in facilitating at the same time, by all possible means, the admission of Mexico, Ecuador and San Domingo as members of the League of Nations. When all the American countries come to be thus represented in the League, the influence of this Continent over the work and progress of the Association will be decisive in respect to the preservation of peace and the establishment of justice and equality among nations.

And referring to the personnel of the offices of the League, it is said:

A greater number of non-European nationals must be included in the personnel of the offices of the League, without overlooking the proportion of Latin-Americans. When the occasion arises to fill vacancies in the League calling for a knowledge of the Spanish language, spoken and written, these positions should not be filled by the nationals of only two or three out of the sixteen Spanish-speaking members, but should be distributed proportionally; and when it becomes necessary to appoint experts on Latin-American questions, only citizens of the Latin-American Republics should be eligible for appointment, as the only possible and competent candidates to these positions.

Europe is still in need of the League of Nations more than any other part of the world; but, without intending to make a selfish declaration, it is to be hoped that the interest of the League in strictly non-European problems will continue to grow. For this reason it is desirable that the personnel of the offices of the League be modified as above suggested.

Then follows a number of recommendations intended to "create and promote, through the League, relations of solidarity, appreciation and respect founded upon the strict fulfillment of international obligations and discharge

of the responsibilities which are imposed upon Cuba by her own status as a sovereign state."

The appendices refer to the personnel of the several delegations to the Assembly, order of business and proceedings of the plenary sessions, Covenant of the League of Nations, and list of original members thereof and States invited to join the same, by-laws of the Assembly and of the Permanent Court of International Justice, and a report of the proceedings of the third committee of the Assembly.

PEDRO CAPO RODRIGUEZ.

NOTES

Le droit international public positif. By J. de Louter. Oxford: Oxford University Press. 1920. 2 vols. pp. xi, 576; vi, 509.

In the year 1910 Professor de Louter, the veteran occupant of the chair of public international law at the University of Utrecht, in the Netherlands, published in the Dutch language his *Het Stellig Volkenrecht* (Positive International Law), a work which was promptly accepted as one of the best treatises on the subject in recent times, by reason of the scrupulous fairness and the scientific method with which all questions were approached and the thoroughness with which they were treated consistent with limitations of space. For an extended review of that work reference is made to an earlier volume of this JOURNAL.¹

The French edition which has now appeared is a translation by the hand of the author himself, thus rendering his work accessible to students of international law throughout the world. Some modifications have been made to bring the work forward to the date of the commencement of the World War, in order to present a faithful statement of public international law as it existed in 1914, with the expectation that its status at that date will be the foundation for its further development.

The importance of Professor de Louter's treatise is indicated by the fact that it is the third to appear in the *Bibliothèque de Droit des Gens* of the Carnegie Endowment for International Peace.

International Relations. By James Bryce. New York: The Macmillan Co. 1922. pp. viii, 275. \$2.50.

This volume, the last published work of the distinguished author, contains the eight lectures delivered by him before the Institute of Politics at Williamstown, Mass., in the summer of 1921. The preface written by the author on December 22, 1921, exactly one month before his death, states:

Painfully struck by the fact that while the economic relations between nations have been growing closer, and the personal intercourse between their members far more frequent, political friendliness between States

¹ Volume 5, page 834.

has not increased, such men have been asking why ill feeling continues still so rife. Why is it that before the clouds of the Great War have vanished from the sky new clouds are rising over the horizon? What can be done to avert the dangers that are threatening the peace of mankind?

This book is intended to supply some materials for answering the questions aforesaid by throwing upon them the light of history. It is History which, recording the events and explaining the influences that have moulded the minds of men, shows us how the world of international politics has come to be what it is. History is the best—indeed the only—guide to a comprehension of the facts as they stand, and to a sound judgment of the various means that have been suggested for replacing suspicions and enmities by the cooperation of States in many things and by their good will in all.

Lecture 1 dealt with "The Earlier Relations of Tribes and States to One Another"; Lecture 2, "The Great War and its Effects in the Old World"; Lecture 3, "Non-Political Influences affecting International Relations"; Lecture 4, "The Causes of War"; Lecture 5, "Diplomacy and International Law"; Lecture 6, "Popular Control of Foreign Policy and the Morality of States"; Lecture 7, "Methods Proposed for settling International Controversies"; Lecture 8, "Other Possible Methods for Averting War".

The History and Nature of International Relations. Edited by Edmund A. Walsh. New York: The Macmillan Co. 1922. pp. 299. \$2.25.

This is a collection of special lectures delivered on International Relations before the students of the School of Foreign Service, Georgetown University, Washington, D. C., edited by the regent of the school.

The lecturers and their subjects are as follows: Dr. Stephen P. Duggan, "The Fundamentals in a Scientific Study of International Relations"; Professor Michael I. Rostovtseff, "International Relations in the Ancient World"; Professor Carlton J. H. Hayes, "Medieval Diplomacy"; Hon. James Brown Scott, "Development of Diplomacy in Modern Times"; Professor James Lawrence Laughlin, "Economic Factors in International Relations"; Hon. John Bassett Moore, "Specific Agencies for the Proper Conduct of International Relations"; Hon. Esteban Gil Borges, "The Evolution of International Private Law"; Hon. Leo S. Rowe, "Latin America as a Factor in International Relations"; Hon. Paul S. Reinsch, "The Far East as a Factor in International Developments"; Professor Edwin M. Borchard, "The United States as a Factor in the Development of International Relations".

A brief appendix narrates the influence of Grotius, Suarez and De Victoria upon international law, and calls attention to the republication of their works in "The Classics of International Law" by the Carnegie Endowment for International Peace.

Transactions of The Grotius Society. Vol. VII. London: Sweet and Maxwell. 1922. pp. xlii, 166. 8s. 6d. net.

This volume contains papers read before the Society in the year 1921. The preliminary pages relate to the business affairs of the Society, and contain memorial notices of deceased members, including Prof. Henry Goudy, Sir John Macdonell, and Lord Reay, and an account of the tribute to Grotius made by members of the Society at his tomb in Delft on September 5, 1922.

The principal papers contributed to the volume are: "The Infancy and Youth of Hugo Grotius", by W. S. M. Knight; "Aerial Warfare and the Laws of War", by Herbert F. Manisty; "The Right of a Belligerent Merchantman to Attack", by Professor Hugh H. L. Bellot; "Justiciable Disputes", by Ernest A. Jelf; "The Law of the Air", by Wm. Latey; "Peace versus The League of Nations", by Sir Graham Bower; "The Washington Conference and Air Law in Disarmament", by Professor de Montmorency; "The Baltic Minorities", by Baron Heyking; "Military Administration of Occupied Territory in Time of War", by Lieut.-Col. de Watteville; "Chemical Warfare; The Possibility of its Control", by Major Victor Lefebure.

The British Year Book of International Law, 1922-23. London: Henry Frowde & Hodder and Stoughton. New York: Oxford University Press, American Branch. pp. vi, 260. 16s. net.

This is the third year issue of the *British Year Book of International Law*. The present volume contains the following leading contributions:

"Contraband", by the late Sir H. Erle Richards, followed by a memorial notice of the author prepared by Viscount Finlay; "The International Status of the British Self-Governing Dominions", by Malcolm M. Lewis; "The Territoriality of Bays", by Sir Cecil Hurst; "Enemy Ships in Port at the Outbreak of War", by Professor A. Pearce Higgins; "An International Criminal Court and the Resolutions of the Committee of Jurists", by Lord Phillimore; "Blockade in Modern Conditions", by H. W. Malkin; "Angary", by C. Ll. Bullock; "The History of Intervention in International Law", by P. H. Winfield; "Submarines at the Washington Conference", by Roland F. Roxburgh; "Immunity of States in Maritime Law", by W. R. Bisschop; "The Barcelona Conference on Communication and Transit and the Danube Statute", by G. E. Toulmin.

Following the leading articles are a series of notes on the Washington Arms Conference, the Monaco Congress on Aerial Law held in 1921, The Second International Child Welfare Congress, held in Brussels in July, 1921; the Rome session of the Institute of International Law, held in October, 1921, and several other notes, including a note on and the text of the decision of the Vice-Admiralty Prize Court of Hong Kong, in the case of

The Greta involving the carriage of belligerent troops by a neutral transport. Two pages are devoted to a digest of cases dealing with international law decided by the English courts during the past year. A department of book reviews notices some of the leading works on international law issued during the year; a summary of events entered by countries and subjects is given, with references, for the period June 1, 1921 to April 30, 1922; and the volume closes with a bibliography covering the same period of books, periodicals and official publications dealing with international law and related subjects. The volume contains an adequate index.

Grotius Annuaire International pour 1921-1922. La Haye: Martinus Nijhoff, 1922. pp. viii, 308. 12 fl.

This issue of the *Grotius Annuaire International* is prefaced by an appreciation of the services of Jonkheer H. A. van Karnebeek, Minister of Foreign Affairs of the Netherlands, written by Dr. Loder, President of the Permanent Court of International Justice.

The volume is printed chiefly in French, and the principal contributions are on the following subjects:

"Some observations on the rôle of states of the second rank in the concert of powers: Holland and international cooperation", by J. A. van Hamel; "Commission and Bureau of Maritime War Damages", by K. Jansma. Annexed to the foregoing article is a summary of the maritime damages suffered by Holland during the war, showing a total of 5,184 claims, amounting to 91,749,005.79½ florins. These claims are made against Germany, France, Great Britain, Italy, Austria, Portugal, Russia, Turkey, the United States, and some are unidentified. The principal items are, in round numbers, 50,000,000 fl. against Germany, 15,000,000 against Great Britain, and 25,000,000 unidentified.

The volume also contains a summary of international events of a juridical character, a brief account of the Royal Dutch Commission on Private International Law, by D. Josephus Jitta; a summary of Dutch jurisprudence in matters of private international law during 1920-1921, by M. J. van der Flier; a long account of the accession of Holland to the League of Nations, including the textual reproduction of the documents relating to the subject; an account of Holland and the International Labor Organization, by A. M. Joekes; and an account, accompanied by the text of documents, of the interpretation of Art. 389 of the Treaty of Versailles concerning the nomination of non-national delegates to the International Labor Conferences. The text of the following prize decisions involving Dutch boats and cargoes are reproduced; *The Bernisse* and *Elve*, decided by the English Privy Council; the *Midsland* and the *Gelderland*, decided by the Belgian Council of Prizes. An interesting account is given of the organization of the Permanent Court of International Justice at The Hague, and its opening session in that city

on Jan. 30, 1922. A list of the members of the Permanent Court of Arbitration at The Hague is printed, corrected up to May 1, 1922. The text of the decision of that court in the French claims against Peru, decided Oct. 11, 1921, and of the report of the International Commission of Inquiry in the case of *Tubantia* are also reproduced.

The volume closes with a list of international institutions, having their headquarters in Holland, a list of Dutch institutions having an international object, and a bibliography of publications published in Holland on international law and international relations.

The Big Four and Others of the Peace Conference. By Robert Lansing. Boston and New York: Houghton Mifflin Co. 1921. pp. 213. \$2.50.

This is a personal sketch by former Secretary of State, Hon. Robert Lansing, a member of the American Delegation to the Peace Conference, of Messrs. Clemenceau, Wilson, Lloyd George and Orlando, who are termed "The Big Four", together with impressions of M. Venizelos, Emir Feisul, General Botha and M. Paderewski. A photograph of each of the gentlemen mentioned accompanies the sketch of his activities at the Peace Conference.

Souveraineté et Liberté. By Leon Duguit, Dean of the Law Faculty of Bordeaux. Paris: Felix Alcan. 1922. pp. 208. 8 francs net.

This small French volume contains the lectures delivered by the author at Columbia University, New York City, in the months of December, 1920, and January and February, 1921. There are 13 lectures in all, entitled as follows: 1. Les notions de souveraineté nationale et de liberté individuelle; 2. Qu'est-ce qu'une nation? 3. Quels groupements sociaux sont aujourd'hui des nations? 4. La nation française et la nation allemande; 5. Qu'est-ce que la souveraineté? 6. La nation titulaire originaire de la souveraineté; 7. La souveraineté nationale dans les relations extérieures; 8. La Ligue des Nations; 9. La souveraineté nationale à l'intérieur.—La liberté de l'individu; 10. La conception solidariste de la liberté; 11. Les principales conséquences de la conception solidariste de la liberté; 12. La liberté d'association et le syndicalisme; 13. L'organisation de l'État moderne et la liberté de l'individu.

Traité de Versailles 1919. Paris: Berger-Levrault. 1921. pp. 242. 3 fr. 50.

This is a small French volume containing the text of the Treaty of Versailles, an extract from the *Journal des Débats*, giving an account of the meeting on May 7, 1919, when the treaty was delivered by Mr. Clemenceau to Count Brockdorff-Rantzau, an extract from *Le Figaro* of June 29, 1919,

giving an account of the signature of the treaty, and an extract from *Le Temps* of July 2, 1919, giving an account of the deposit of the treaty in the French Chamber of Deputies by M. Clemenceau, and the remarks on that occasion of President Deschanel and M. Clemenceau.

*Books Received*¹

Ausweisung und Internierung Feindlicher Staatsangehöriger. By J. Spiropoulos. Leipzig: Rossberg'sche Verlagsbuchhandlung, 1922. pp. 148.

Annual Report on Reforms and Progress in Chosen (1918-21). Compiled by Government-General of Chosen. Keijo: December, 1921. pp. ix, ii, 232.

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[*Abbreviations:* *Ad.*, address; *BR.*, book review; *BN.*, book note; *CN.*, current note; *Ed.*, editorial comment; *JD.*, judicial decision; *LA.*, leading article.]

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